

AN
ENQUIRY
INTO THE
Customary-Estates
AND
TENANT-RIGHTS

Of those who hold LANDS of

CHURCH *and other* FOUNDATIONS,

BY THE

TENURE of THREE LIVES and TWENTY-
ONE YEARS.

With some CONSIDERATIONS *for Restraining*
Excessive FINES.

To which is added,

The Copy of a BILL, drawn and perused by divers
Eminent Lawyers, for settling of CHURCH-FINES.

By EVERARD FLEETWOOD, *Esq;*

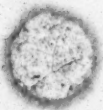
Est Modus in Rebus, sunt Certi deniq; Fines,
Quos ultra citraq; nequit consistere rectum HOR.

The THIRD EDITION.

LONDON Printed ; and DUBLIN

Re-printed in the Year MDCCCLXVIII. Price 1s. 1d.

1538
129



1538
129

19. 3/7/13
HARVARD COLLEGE LIBRARY
MAY, 28, 1913
SUBSCRIPTION FOR
ENGLISH HISTORICAL TRACTS

C O N T E N T S.

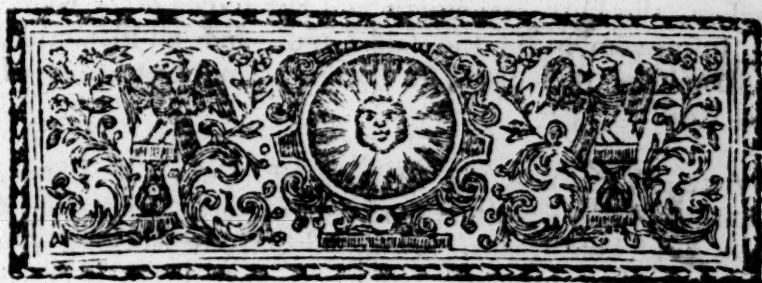
S H E W I N G,

- I. *THE Difference between Lay and Ecclesiastical Estates.*
- II. *THAT the Customary Tenants for Three Lives and Twenty-one Years, have a Right to renew their Leases at the usual Times of Renewal, on Payment of a reasonable Fine.*
- III. *THAT the Reasonableness of Fines ought not to be left to the Discretion of those that are interested therein.*
- IV. *THAT the Parliament in all Times have zealously interposed to settle Disputes between the Clergy and Laity.*
- V. *CONSIDERATIONS for settling Church Fines.*

AN

2-Т-И-Э-Т-И-О-5

THE FIVE



A BILL for ascertaining Fines, upon Renewal of Leases ; for settling the Right, and for the better Discovery and Improvement of Mines, in Leasehold and Copyhold Grounds, held under Ecclesiastical Persons ; and for the Encouragement of Tillage, Building, and Planting upon the same.


 HEREAS the Tenants and Owners of Lands, Tenements, and Hereditaments, holden by Lease, under Bishops, Deans and Chapters, Prebendaries, Archdeacons, and other Ecclesiastical Persons, and their Assigns, have by antient Custom, been admitted to a Renewal of their respective Leases, upon Payment of a reasonable Fine, whereby many of his Majesty's Subjects have been induced to purchase such Leases, for great sums of Money, and valuable Considerations paid, and also to expend Large Sums in Building and Planting, upon the same : But of late Years the Lessors of whom such Leases are holden, have demanded and exacted, arbitrary and exorbitant Fines upon Renewal of such

[a]

Leases

Leases, and do daily increase in such Exactions, to the great Vexation, and Impoverishing of the said Lessees, the Discouragement and Hindrance of Tillage, the Improvement of the said Lands, and all Plantation and Building thereupon, to the Hurt and Detriment of this Realm.

AND WHEREAS the Owners of Copyhold Lands, where such Ecclesiastical Persons are Lords, and also of such Leasehold Lands, are disabled from working the Mines, and discouraged from planting Trees in such Copyhold and Leasehold Grounds, by means whereof the Discovery and Working of Mines, and planting Trees, in such Copyhold and Leasehold Grounds is neglected, and the Improvements by Tillage discouraged by the Uncertainty of Fines, without any real Advantage accruing thereby to such Ecclesiastical Persons.

FOR REMEDY WHEREOF; BE IT ENACTED.

That from and after the Day of
which will be in the Year of our Lord

no Archbishops, Bishops, Deans and Chapters, Prebendaries, Canons, Archdeacons, or other Persons having spiritual Promotions, shall take, exact, or demand for the Renewal of any Lease or Leases of any Lands or Tenements holden under them, any Sum of Money, or other Profit exceeding the Rates herein after mentioned ; (that is to say) For the Renewal of any Lease, granted for the Term of One and Twenty Years, or three Lives (where Seven Years only shall be expired or two Lives in being) or for the Term of Forty Years (where Fourteen Years only shall be expired) a Sum not exceeding the Fine paid upon the last Renewal of any Lease of such Premises, had or made before the said

Day of _____ for the like Numbers of Years
or Lives, and for the Renewal of any Lease granted for
One and Twenty Years or three Lives (where Fourteen
Years shall be expired, or one Life in being) a Sum
not exceeding _____ times the Fine paid upon
the _____

the last Renewal of such Lease ; and such Fine and Fines respectively is and are hereby established as the certain Rule and Measure of and for all future Renewals and Fines, so as the Fine paid on the last Renewal did not exceed one Year's Rent or Value.

PROVIDED NEVERTHELESS, That in case such Premises shall at any time hereafter, become of a greater or higher Yearly Value or Rent, than the same was worth or let for at the Time of such last Renewal, that then and in such Case, it shall and may be lawful for such Lessor or Lessors, to exact, demand, and take from such Lessee or Lessees, from time to time, for such future Renewals of such Leases, for one and Twenty Years or three Lives (where Seven Years only shall be expired, or two Lives in being) or for the Term of Forty Years (where Fourteen Years only shall be expired) one full Year's Rent of the Premises, to be renewed according to the improved Value, and no more, and of such Leases for One and Twenty Years or three Lives (where Fourteen Years shall be expired, or one Life in being)

Years Rent of the Premises, to be renewed according to the improved Value and no more, without any Abatement or Deduction, other than the annual or accustomed reserved Rent payable to the Lessor or Lessors out of the said Premises so to be renewed, which is hereby intended and directed always to be deducted from the said Fine.

AND BE IT FURTHER ENACTED, by the Authority aforesaid, that from and after the said Day of

if any Owner of any such Lands or Tenements, shall at the End and Expiration of Seven Years of any such Lease of Twenty-one Years, or within

Months after ; or at the End and Expiration of Fourteen Years of any such Lease for Forty Years, or within

Months after ; or after the Determination of one Life at any time whilst two more are in being, or at the End and Expiration of Fourteen Years of any Lease for One and Twenty Years, or within

Months after, or at the End and Expiration of Two Lives at any time whilst one Life is in being, by them-

selves, or any other Person in their behalf, request of
 such Lessor or Lessors, or from the chief Steward or
 Agent residing within the Diocese or County where such
 Lands or Tenements lie, in the Absence of such Lessor
 or Lessors out of the said County or Diocese, a Renewal
 of such Lease or Leases, and tender to such Lessor or
 Lessors, or to such his or their chief Steward or Agent,
 the Fine or Fines hereby allowed for the Renewal of
 such Lease or Leases, and also the usual and accustomed
 Fees due and payable for the making and sealing of
 such Leases, and also the Arrear of Rent then due, that
 then and in such Case, if such Lessor or Lessors refuse or
 neglect to deliver to such Lessee or Lessees, or to such
 Person or Persons so employed in their behalf, a new
 Lease of the said Premises, duly executed for the same
 Term, and under the same Rents, as were reserved and
 inserted before the making this Act, that then and in
 such Case it shall and may be lawful to and for such
 Lessee or Lessees, and those claiming under them, to
 hold and enjoy from thenceforth such Leasehold Tene-
 ments, until such Lease as aforesaid shall be delivered
 to him or them, without paying more than the usual
 Rent for the same, or higher Fine than was so due at
 the Time of such Tender made, and without any Pre-
 judice to be incurred to such Lessee, by the Determi-
 nation of the Years or Lives for which such Lease or
 Leases were granted.

AND BE IT FURTHER ENACTED, by the Authority aforesaid, that were the true yearly Value of any such Premises, either at the Time of any such last Renewal, or such future Renewal or Renewals, cannot be certainly known or agreed upon, that in such case it shall and may be lawful, to and for such Lessor or Lessee to apply to the Sheriff of such county where the said Premises lie, to have the true yearly Value thereof ascertained, who thereupon shall give _____ Days Notice to such Lessor and Lessee, and shall issue out his Warrant, directed to six or more substantial and indifferent Freeholders of the Neighbourhood, who shall have at least in their own Right, or in the Right of their Wife or Wives _____ Pounds *per Annum*, thereby

thereby commanding them, within a reasonable Time by him to be limited, to view and inspect the said Premises, and to certify to him the true yearly Value thereof; and before such Inspection made, the said Inspectors shall swear to enquire into and report the true yearly Value of such Tenements, at the Time of such Renewal or Renewals, impartially, and according to the best of their Judgment; which Oath such Sheriff is hereby empowered to administer; and such Certificate returned to such Lessor and Lessors, and to such Lessee and Lessees, under the Hand and Seal of such Sheriff, and of such indifferent Persons so sworn, shall be conclusive to such Lessor and Lessee; and the reasonable Charges of such Enquiry shall be equally defrayed by such Lessor and Lessors, and such Lessee and Lessees.

PROVIDED NEVERTHELESS, That no Lessee nor Lessees, their Executors, Administrators, or Assigns who shall not apply for such Renewal within such Terms as aforesaid, shall for such Turn or Time of Renewal have any Benefit by this Act; any thing herein contained to the contrary notwithstanding.

AND BE IT FURTHER ENACTED, That where any Person or Persons shall hold by Copy of Court Roll, or by Lease under any such Ecclesiastical Person or Persons as aforesaid, any Lands, the Mines whereof have not been antiently and accustomably letten, and been enjoyed under Lease at least Years before the making this Act, that in all such Cases it shall and may be lawful to and for every such Copyholder and Leaseholder as aforesaid, to dig, open, win, and work all and every such Mines in and under such Copyhold and Leasehold Grounds as aforesaid, paying yearly to such Ecclesiastical Person or Persons, being the Lord or Lords of such Copyhold Grounds, or the Lessor of such Leasehold Lands, the Sums or Rents herein after mentioned; (that is to say) for and in Respect of the Mines in and under such Copyhold Lands,

Part of the clear annual Profit thereof, exclusive of all Charges and expences which may happen in the opening, winning, working, leading, and vending the same;

same; and for and in Respect of the Mines in and under such Leasehold Lands, the Part of the clear annual Profit thereof, exclusive of such Charges as aforesaid. And for the better ascertaining such clear annual Profit thereof as aforesaid, it shall and may be lawful to and for the said Ecclesiastical Lord or Lords, Lessor or Lessors, from time to time, as they shall see occasion, by themselves or their Agents, not only to descend and go into and inspect such Mines, and the Workings thereof, but also to appoint their Agents from time to time to take an Account of the Profits arising by such Mines, and to inspect the Books of Accounts of such Lessee or Copyholder or their Undertenants or Agents, relating to the said Mines; and if it shall happen that such Copyholder or Lessee, or their Undertenants, shall not within Months after the Expiration of every Year, during the Continuance of the working such Mines, from the first Opening of the same, pay or tender unto such Lord or Lessor, such respective Parts of the clear annual Profit or Produce of such Mines as aforesaid, for and in respect of the preceding Year so due and payable as aforesaid, that then and in such Case it shall and may be lawful to and for such Lord or Lessor, by themselves or their Agents, to distrain upon the said Mines, Coals above Bank, or the Lands under which the same are, for such annual Rent or Profit as aforesaid, in the same Manner as Landlords are impowered to do for Rents in Arrear; and if no Distress, or not sufficient, can be found upon the Premises, then to bring an Action of Debt for the same against such Lessee or Copyholder, and their Undertenant or Undertenants, wherein such Lord or Lessor shall recover his or their treble Damages and Costs of Suit.

PROVIDED NEVERTHELESS, That in Case such Distress shall be made where no Rent, Sum, or Profit due by this Act shall be in Arrear, that then and in such Case it shall and may be lawful to and for such Person or Persons so distrained upon, to have his or their Remedy by Action upon the Case against the Person so distraining, or the Person in whose Right he
so

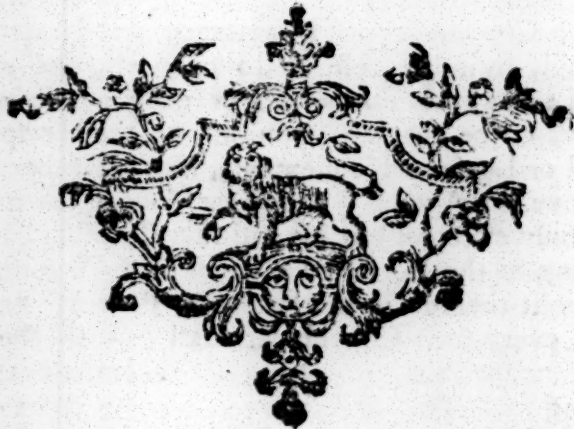
so distrained, at his or their Election, wherein he or they shall recover treble Damages and Costs of Suit.

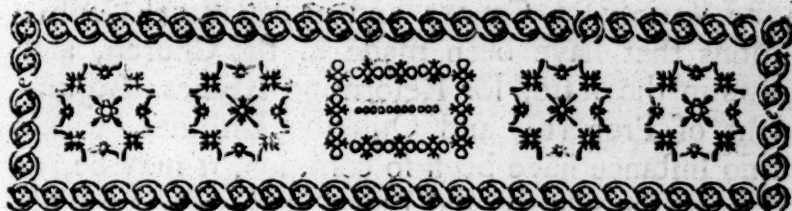
AND BE IT FURTHER ENACTED, That such Copyholders and Leaseholders as aforesaid, shall and may from henceforth be intitled unto such Mines in and under such Copyhold and Leasehold Grounds for and during such respective Estates, Terms, and Interests; as they shall stand or be seized or possessed of in the Lands wherein such Mines lie; and also that it shall and may be lawful to and for such Copyholders to let to Farm and Lease out such Mines as aforesaid, for any Term of Years not exceeding the Interest or Estate which they have in such Copyhold Lands, without any Licence from the Lord of the Manor, or without incurring any Forfeiture or Penalty for so doing; any Law, Usage, or Custom to the contrary notwithstanding.

AND, for the Encouragement of Planting and Growth of Timber Trees, BE IT ENACTED, by the Authority aforesaid, That it shall and may be lawful to and for every such Copyholder of Inheritance and Leaseholder as aforesaid, from henceforth to cut, sell, and dispose of all and every the Timber Trees growing, or which shall grow, or be planted upon his or their respective Copyhold or Leasehold Tenements, (such Timber Trees as are above the Age of Years before the making this Act only excepted) at his and their Pleasure, he and they paying to the Lord or Lessor of such Premises part of the Profit thereof, in the following Proportions; that is to say, every such Copyholder shall pay to the Lord of the Manor within Months next after the cutting such Timber part of the clear real Value, Profit, and Produce arising thereby; and every such Leaseholder part of such Profit, within such Time as aforesaid to his Lessor or Lessors; and for the better ascertaining such Profit, such Copyholder and Leaseholder shall, and is hereby obliged to give Notice to such Lord or Lessor respectively Days at least before the cutting such Timber as aforesaid, of such his Intention, and of the
the

the Number and Certainty of such Timber so designed to be cut, in order to be inspected by such Lord or Lessor, or their Agents; and in default of such Notice, shall be liable to such Forfeiture and Penalties as before the making this Act.

PROVIDED NEVERTHELESS, That nothing herein contained, shall be construed to hinder such Copyholder and Lessee from cutting or taking Timber for the Use of their respective Tenements only, but they are hereby impowered so to do, without any Leave or Licence from such Lord or Lessor; any Law, Usage, or Custom to the contrary notwithstanding.





A N

E N Q U I R Y

I N T O T H E

C U S T O M A R Y - E S T A T E

A N D

T e n a n t - R i g h t s , & c .

I HAVE always disliked that Liberty of Writing, which strikes at whole Orders or Professions of Men, for the Fault or Practice of a few; and am never so much offended, as when I see it employed against the Clergy: Most certainly no publick Order, Office or Profession is the worse, because some have not behaved so well as they ought; and those accustomed to observe what hath passed, and what is now doing in the World about them, know well, that things, how wisely soever framed and contrived, by the constant Flux and Motion they are in, require constant Care and Alterations to keep them right; Sacred Institutions themselves not excepted.

B

THIS

THIS is the true Cause and Occasion of that infinite Variety of Canons and ecclesiastical Constitutions that have been made in the Church, and Laws in the state, for Reforming Abuses, Adjustment of Property, and Quieting Disputes, which in no Instance have been so common, it may be, as between the Clergy and Laity, and even amongst the Clergy themselves; to which let me subjoin, that whensoever they do happen, he will do Service, in my Opinion, to the Peace and Liberty of his Country, that shall sincerely endeavour to compose them in a calm and moderate Way.

I took this Opportunity to make this Profession of my Sentiments, before I entered into a Subject that may possibly offend particular Men; and if I knew what were the strongest Terms to express my Affection to the Orders of the Clergy in general, I am sure I would use them; after which I hope I may be allowed to debate the present Case with more Freedom, for without a *free Pen* as well as a *free Tongue*, Grievances can never be well known or well stated.

THE Murmurings and Complaints that run through the Kingdom at this Time, of the strict and rigorous Proceedings of Churchmen against their Tenants, nobody can be ignorant of: I will not represent or aggravate them by Words of my own; but give them truly to the Reader, as they are express'd in a Letter from a Person of Quality now before me, which is the more singular, on account of the Reputation he hath gained of a thorough Zeal for that Party amongst us that are said to have most Affection for the Church, as most deservedly he hath of Sincerity and Honour with all Men: That Part of it to my Purpose is as follows;

IN

IN this Diocess and another, wherein I have Concerns, indefatigable Pains are taken, and Devices and Pretexs hitherto unheard-of, are used to levy Money on Tenants of Church and College Lands. We are visited not for our Manners, but our Manors. Inquisitions and Surveys are taken every where with the utmost Rigour; Valuations at pleasure are imposed upon our Estates, and laid down as the Measure and Rule for Renewals and Fines. Groves, Avenues and Plantations, raised by Gentlemen by long Care and Expence, have been demolished. Attempts are made to break through and lay aside the Customary Tenure for Three Lives, and to convert the whole of these Estates into Leases for Twenty-one Years; and consequently to extinguish and subvert our Freeholds, and reduce the Number of Freeholders in every County; that they are not compellable to renew with their Lessees at the Expiration of any Life or Term; or such as purchase the same, may do what they please with their Tenants, and ask where is the Difference between theirs and Laymen's Estates.

As to the Question here put, Where is the Difference between Lay and Ecclesiastical Estates? It is a common Saying, Who are so blind as those that will not see, or those whose Eyes are dazzled with the enchanting Prospects, of Wealth, Honours, and the Pomp of this World? I will therefore presently give an Answer to this Question, which is of Importance to be understood and well remembered.

IN the mean time it cannot be unknown, what Rules and Advice * a Venerable Dignitary and Or-

* Dr. Grey, Prebend of *Durham*. Antient and Present State of the County Palatine of *Durham*, p. 117.

nament of this Church, now dead, laid down for his Brethren: In this very Case, he told, and used *often* to tell them, that the *Laity* were their Patrons; that their Estates came from the Benefactions of the Laity, and recommended it to them to keep to the *old* Rule (which he himself strictly followed) to be easy and *moderate* in renewals of Leases, to encourage the Tenants *Improvements*, if they meant to avoid the Evil of those unhappy Civil Wars, whereof he had *bitterly* tasted, to which he said, some *rigid* Clergy had not a little contributed, or rather by provoking the Laity, had in a great measure occasioned.

THE Advice of this grave, beneficent and experienc'd Churchman, is worthy to be ever had in Remembrance. It is true, the *Laity* were their *Patrons*, and deprived their *Heirs* and Families of their Estates for the Sake of the Church *, and sometimes were unconscionably persuaded to beggar them by those who had got too strong hold of their Consciences; and 'tis a most serious consideration, whether by talking and acting in the Stile which the Letter mentions, the Clergy do not run too great a Risque, and expose their Orders to too great Hazards; nay, and engage on too great Odds likewise; for I believe I may say, there are Twenty Thousand of the Nobility and Gentry of this Kingdom concerned; and then when Men are oppressed, to be sure they will complain, and it is to be feared, will fly to such Extreame for Ease, that may not be in the power of any Prudence, or Virtue, or Moderation to keep the Balance even.

BUT without further Preface, to proceed to the Question, Where is the Difference between Lay and Ecclesiastical Estates?

* Rights of Princes, p. 117.

THIS Question, no doubt, is put in this View, That the last have the same Right as the first to deal with their Tenants and Estates, and to make the best and the most of them for their own Use and Advantage: and granting it was so, will that justify rigorous Exactions upon their Tenants? But nothing can be more essentially different in Nature and Quality, than these two Estates.

LAY-FEES are pure, absolute and unconditional Estates in the Owners; but Ecclesiastical Corporations, though by Fiction of Law said to have a Fee in their Estates, yet in Reality are no more than Tenants for Life: Some Books compare them * to Tenants in Dower, which is a Tenant for Life, because the Possessions are the *Endowments* of the Church; but there is certainly great Difference between them; the Tenant in Dower holds in her own Right; the Church Possessor as an *Usufruct*, not for himself alone, but in *Auter Droit*, for the Benefit and Use of others. And for this Reason it is, that if an Ecclesiastick commits Felony, his Lands are not forfeited as other Freeholds are.

AGAIN, Lay-Tenants come in by Purchase or Descent, the other by free Gift; the Laity were their Patrons and Donors: Tenants of Lay-Fees are unaccountable for the Profits they make of their Estates to any; but the others are *accountable*; but this will be better understood, and the Question better cleared, by taking a short View of the Original Nature, *Trust* and *Design* of Donations to the Church, and on what Grounds in the Laws of *England* they stand.

IN the Foundation of the Church, while a Bishop was the Pastor of one single Congregation, and

* 2. Inst. 627

his Diocess reached no farther than one Communion-Table might serve, he had no Revenues but what arose from the Gifts and Offerings of Devout People, which were distributed by the Community of the Church, for the *Maintenance* of the Bishop, and *Relief* of the Poor, the Uses for which they were given.

In the fourth Century the Wealth that was gathered from *Offerings*, appears to be very great; but grew Prodigious by the Laws of *Constantine*, made for permitting Churches to be Endowed by Gift or by Will, with *real* and *immoveable* Estates: The Rich set themselves no Bound, some disinherited their Heirs and Families of the Whole, and some of Part of their Estates; others after Endowment, took back *Leases for Lives*, paying a yearly Revenue to the Church; and all Men, who left and deposited their Estates with the Church, did it on the *special Trust*, and to the Intent and Purpose to be employed in *Alms, Hospitality, and Works of Charity*, and for the *decent Maintenance* of the Clergy, which we read was done in divers Manners, by various Proportions and Divisions, as the Service of the Church, and the Necessities of Men required.

AND to the End that the Publick Use and Design of these Benefactions should *never* be forgot, the Writings of Churchmen and others in every Age, are full of Remembrances, and very free and necessary Directions for the Management of them; as for Example, that they who *enter* into the Clergy, ought not to *appropriate* or *possess* the Revenues of the Church as their *own*; but distribute them to the Poor, as a *Trust belonging to them*: — That they are *Deposita Pietatis*, the *Vows* of the Faithful, the *Patrimony* of the Poor: — Again, if a Clergyman is Rich, and *lives* upon the Revenues
of

of the Church, he *robs* the Poor, and that defrauding the Poor, is the most *impious* and *detestable* of Thefts.

THESE and much stronger Things are said in the Writings of the Clergy, and the most Authentick * Memorials of the Church, enforced moreover by Constitutions and Canons from time to time, which for Brevity sake I omit : And from thence every Age will be informed, that the Foundation of the Church is laid upon the Scheme and Principles of *Universal Charity* and *Beneficence*, wherein, if I mistake not, is comprehended, the Whole of the Cause of Virtue, and what is *beneficial* to Mankind ; that Revenues were *appropriated* to it to be a perpetual Fund or Stock, to give *Strength* and *Vigour* to that *glorious* Cause, which languishes or acts with less Energy and Force, unassisted by some such external Powers.

* Quoniam quidquid habeant Clerici Pauperum est & domus illorum omnibus debent esse Communis. Dist. 23. c. 3.

Sancta Synodus non solum jubet, ut Episcopus, modesta suppellectili, & mensa ac frugali victu contenti sint ; verum etiam in reliquo vitæ genere, ac tota eorum doma caveant, ne quid appareat, quod a sancto hoc instituto sit alienum ; quodque non simplicitatem, Dei zelum, ac vanitatem contemptum præ se ferat. Omni vero eis interdixit ne ex redditibus Ecclesiæ. Consanguineos ; familiaresve suo, augere studeant : Cum & Apostolorum Canones prohibeant, ne res Ecclesiasticas, quæ Dei sunt Consanguineis donent, sed si Pauperes sint iis ut pauperibus distribuant, eas autem non distrabant nec dissipent illorum Causa : Imo quam maxime potest, eos sancta synodus monet ut omnem humanum hunc, Erga fratres, nepotes, propinquoque Carnis affectum, unde multorum malorum in Ecclesia Seminarum extat. Penitus deponant. Conc. Trid. Sess. 25. de Reform. c. 1.

This Text, saith the learned Dr. Straban, is to be understood of all the Ministers of the Church who enjoy Ecclesiastical Revenues, of which they are only the Depositary. Dom. V. 2. 452.

AFTER this, I know nothing so much to the Honour and Advantage of our holy Religion, as to observe that it is founded upon the same *Divine Principles*, that *large Revenues* by the *Laity* have been given to, and *vested* in this *National Church* in *Trust* for the *same Design* : And further, that in the *Laws* and *Constitution* of *England*, there are *Grounds* to secure them for the *Benefit* of the *Publick* for ever, between which, and those which concern the *Regulation* of *Lay-Fees*, a *wider Difference* there possibly cannot be.

By the Statute of 25 *Ed. c. 3.* it is declared, *That the Church of England is founded in Prelacy by the * Kings of England, Earls, Barons and other Nobles of the Realm, to inform them and the People of the Law of God, and to make Hospitality, Alms, and other Works of Charity. — That Possessions in Fees, Lands, Rents, to a great Value, were assigned to the Prelates, and other People of Holy Church, to sustain the Charge, by the Kings of this Realm, Earls, Barons, and other † Nobles.* To which I add the common Law made no other Provision for the Poor ; the Poor were found and provided out of this general and national Fund until the Statute of the 5th of *Queen Elizabeth*.

I would not be understood to say, that the Church hath had no other Benefactors besides the Laity. 'Tis certain some of its own Members have been Munificent and Liberal to it since the first Foundation ; the Goods which they received from the

* *Rex & Domini Temporalis possunt legitime & meritorie auferre Temporalia & bona Fortunæ a viris Ecclesiasticis ipsis abundantibus habitualiter.* 2. Conc. J. Wickliff, Pryn. 4. Inst. 244.

† *Barones Minores* ; inferior Lay-Lords of Manors, that were so called in Contradistinction to the *Majores Barones* ; these last being only summoned to Parliament.

Church they returned to it again ; nay, so noble have some of their Benefactions been, that you cannot read them without a particular Veneration for their Persons, and Esteem for their Order. I cannot stay to mention above one Instance, and that shall be a late very Excellent Prelate, I mean Dr. *Morley*, late Bishop of *Winchester*, who died not long ago *full of Years and full of Honour*, as History * tells us, who gave to his See, and disposed of in his Diocess, in works of Charity, no less than *Fifty thousand Pounds* : This I mention for the Honour of that Order ; it was acting up to primitive Practice, the Constitution of the Church, and to the Intent of the Laws, which directs the Revenues to be so employed, and accounts Alms and Relief of the Poor, a † divine Service ; and what is done to the Poor for God's-sake, is done to God himself ; which gives us, by-the-bye, the true Meaning and Extent of the Words ‡ *Deo & Ecclesiæ*, so often occuring in antient Cartularies and Grants, which is the same thing as to say, that they of the Church or Community, to whom such Grants are made, shall hold the land in Succession, to be employed in *pure and perpetual Alms* and Hospitality, or in *Frankalmoigne*, as the Lawyers speak.

IN the next place, for *perpetuating* and securing this National Fund for the *Trusts* and Purposes it was designed, the Common Law did not think fit to trust any *single Person* or *sole Corporation* with it ; as Archbishop, Bishop, Archdeacon, Prebendary, Parson, Vicar, and the like ; but vested the Authority of disposing thereof, as follows, *viz.* The Lands of every See, in the Bishop, Dean and

* Ech. H. Eng. p. 45.

† Co. Lit. 96.

‡ V. 2. Infl. 2. *Quod datum est Ecclesiæ, datum est Deo.*

Chapter ; of Archdeacons and Prebendaries, in their respective Offices, the Bishop, Dean and Chapter ; of Parsons and Vicars, in their Patrons and Ordinaries ; all these were to concur to bind the Successor, and further to hold an even and equitable Mean between the Possessor and he that should succeed, that one should have sufficient, and the other not left without Means to support a decent Appearance in Life, and Maintain Hospitality : The Law very wisely, and most agreeably to that Circumstance of the Church, *prescribed* and laid down a *Rule* for letting and disposing of their Estates by the *Customary* Tenures now in Use, for Three Lives and Twenty-one Years (which I shall speak of more at large) ; and beyond those Boundaries, legally, and without Mischief to the Church, they could not go, though by a concurrent Assent. And this was doing all that human Prudence could do to prevent Waste being committed in the Patrimony of the Church : But no sooner was this Policy changed, and the Restraint taken off, by the * Statute of 32 H. 8. which, for a Particular Reason, hereafter to be mentioned, enables the single Bodies above-named (except Parsons and Vicars) *Sole*, and without the Concurrence of others, to make Leases ; but it was found to be too much to trust any *single* Person, as the Act then stood : 'Tis true, the Spirit and Intention of the Act gave no more than the *ordinary* Power to lease for Three Lives or Twenty-one Years, as it was at the Common Law ; but Devices were found out, now the Power was vested in one, to evade and destroy that Tenure : So long and unreasonable Leases for Years sprung up for the Lucre of large Fines, un-

* C. 28.

known to the Common Law, to the great Prejudice and Impoverishment of Successors ; but they were soon again damn'd by the disabling Acts of the 1st and 13th of Q. *Elizabeth*, and restrained and brought back to run in their old Channel for Three Lives or Twenty-one Years ; so that 'tis no new thing to restrain the Avarice of Churchmen. But this by the bye.

ANOTHER thing which the Law did to preserve the Donations, was to inflict upon the Spoilers of them, a Forfeiture of Office, or Deprivation : For this End the Common Law considers Ecclesiastical Benefices or Corporations, as Offices of Trust, and always in the State of Infancy ; *Ecclesia est infra ætatem* ; and on that account sheweth a sort of Paternal Care and Concern for the Interest of both, as a good Guardian ought to do.

THUS if a Man have the * Custody or Guardianship of an Infant, and commits or doth any Act of Waste, he forfeits that Office or Custody, yields Damages to the Value of the Waste, and is to be fined to the King for this Reason, because it is *contrary to his Trust* : So in the Church, If a Bishop, Parson or Prebend commit Waste or Dilapidation, which is the same thing, by *cutting down, selling Timber-Trees and Woods* standing or growing upon the Estate, and letting Houses fall down, or run to Decay, for the same Reason he is to be removed from his Office ; and the Law saith, it is a sufficient Cause of *Deprivation* of their Ecclesiastical Living, Dignities and Promotions, as it was holden †

* 2. Inst. 300.

† 12 Jac. I. Godbolt. 259.

by the whole Court of *King's Bench* in the Bishop of *Salisbury's* Case ; and so I conceive it would be in any other particular Acts of *Waste* or Dilapidation, and that whatever is *Waste* at Common Law, in prejudice of a Reversioner, is *Waste* or Dilapidation with respect to a Successor. And lastly, before I close up this Point, let me add, that these Publick Revenues and Ecclesiastical Offices have the *Laity*, the Legislature, I mean, for their Protectors as well as Patrons. The Legislature hath in all Times, yielded necessary Assistance to, and acted as supreme Guardians and Overseers of them. Something of this hath been mentioned before, with respect to the Disabling Acts, therefore the following Example will suffice in this Place.

In the * 2d of *H. 5.* a Bill was brought in, the Effect of which was, “ That lands devoutly
 “ given, and disordinately spent or misapplied
 “ by Religious and Spiritual Persons, should be
 “ seized into the King's Hands : That the same
 “ would suffice to maintain, for the Honour of
 “ the King and Defence of the Realm, Fifteen
 “ Earls, Fifteen hundred Knights, Six thousand
 “ two hundred 'Squires, and a Hundred Alms-
 “ houses for Relief of the Poor ; and the King
 “ would have clear Twenty thousand Pounds.” This Bill, intemperate as it seems to be, had probably pass'd, but for the Prudence or Dexterity of one or two at that Time ; and I cite it only in this View, to shew, that the *Laity*, whose Ancestors were the Founders and Patrons of the Church, will not sit still and see the Estates of it squander'd away and misapplied, no more than

* Hollin. Hist. Eng. H. 5. fo.

they will to see the Tenants *burthened* and *tormented* with heavy *Fines* and *Exactions*, which herein-after will be shewn.

I HAVE now dispatched what I had to say of the *original Nature, Quality* and *Design* of Ecclesiastical Estates, with the utmost Brevity that was possible, and in a View, that the Reader, without any Recapitulation, might himself be able to resolve the Question, What Difference there is between Lay and Ecclesiastical Estates?

I CONFESS they seem to me, to be founded on quite different Principles, and to be in no one Point and Quality alike, with respect to the * Property and Interest which appertains to Each. Church Estates and Possessions, are lodged in *Custodia Legis*, and Patronage of the Laity, and well hath it been for the Church that it was so; but every Layman, by Law, hath the Keeping of his own, not fettered, restrained, or tied up as the others be; but there is, perhaps, one Quality in common between Ecclesiastical Possessors and Lay Tenants, who are Tenants for Life, in this, that both may be too apt to make the *best* Use of their Time.

I COULD not avoid saying thus much, to set the *Difference* in a full and clear Light, between *Ecclesiastical* and *Lay* Estates, wherein I have not the least Intention to dispute the *Just* and *Legal* Rights of the Church; but only to oppose the *immoderate* Claims and *Exactions*, complained of through the Kingdom, under *Pretence* of preserving them; and it was the more necessary, since it is publickly advanced every where, that the *Laity*, the *Patrons* of

* Their Temporalities or Baronies are seizable for Contempt, to the Crown. Stat. 25 E. III.

these Estates, had no *Regard* whatsoever, to the Tenants that were to *labour* and *improve* them for the Benefit of the Church : And now in my Turn, let me ask a Question, What regard had the Founders to the Clergy ? As *Men*, most assuredly none at all, and as *Churchmen*, no other Regard than to provide a decent Support and Maintainance, and that in so moderate a Way, that there might be a Portion to distribute in Works of Charity. This is the *legal* Sense and Understanding of those thread-bare Words, *The Rights of the Church* ; beyond this they have no Meaning or Sense whatsoever ; in this Sense * Divines use them (if they mean any thing) when they adjudge the Detention of that from the Church, which is known to be *Consecrated* to it, to be sacrilege ; for this Reason, and no other can be assigned, because the pious Intentions of the Donors and the poor are defeated and *defrauded* ; so by the same Doctrine and Rule, he that defeats or defrauds the same End, by not applying them to, or misapplying the Revenues of the Church, incurs the Guilt of *Sacrilege*.

IN this preventive View, the Emperor † *Justinian* forbid promoting to the Office of Bishop, Persons who had Children or Grand-Children, to prevent Spoilations in the Revenues of the Church, and being diverted to the Uses of his Family : And in the same View, a ‡ Reverend Prelate, with a Freedom that becomes him, declares that the Custom of taking of Fines at the Renewing of Leases, is unlawful, unless to be applied to the Uses of the Church, that is to say, the Uses before-mentioned : and lastly, upon the same Foundation,

* Prideaux Con.

† Dom. 2 V. T. Orders.

‡ Rights of Princes, p. 80.

and in a View, and to prevent sacriligious Detentions, and to apply the Revenues according to the Intention and Will of the Donors, the Clergy have a Right to make the best and most of their Estates; but with this Limitation, Always by *Such a Measure and Rule as the Laws and Usages of the State or Society had laid down, and not otherwise.*

THESE are the Terms and Conditions on which Ecclesiastical Benefices or Offices are founded in Law, and they that will accept them, must take them as the Law hath constituted and framed them: But now let me once more ask, Is it not monstrously Inconsistent with that beneficent Spirit of the *Laiety*, the *Patrons* of these Rights, who were persuaded to disinherit their own Heirs and Families: I say, is it not inconsistent with this exalted Piety, to say that they had no Regard to the Tenants, by whose Labour and Industry the Church was to subsist in all Ages? Is it not much more reasonable, nay, more religious, to construe their Intent to be, that the Tenants, their Posterity, and many of them, no doubt, their Heirs, and of their Families, should be *indulged* with Privileges, and a *beneficial* Tenure, and be dealt withal in a *tender* and *moderate* Way? If this be so, 'tis not necessary to prove they have a Right to be so used, and it will be undeniable, by what will be offered in the Sequel, concerning other legal Rights which the Tenants have in their Tenancies, *concurrent* with the Church.

As it was impossible for the Church to subsist, or its great Designs of Charity to be answered, without committing their Lands to Tenants, to *labour* and *improve* in Husbandry, from whom it might receive such Returns of Corn, Cattle, or annual Sums, as the Exigency of Times required; so neither was it possible for the State to subsist
without

without the Cultivation and Tillage of Land, for which Reason 'tis material to premise the Estimation and Account in Law which Husbandry is of, from the Mischiefs which are noted to happen both to Church and State by the Decay of it.

* *SIR Edward Coke* in his first *Institutes*, writes, *That by the Decay of Husbandry Churches are destroyed, and the Service of God neglected, by the Diminution of Church Livings: And with respect to the State, That the Defence of the Land is impaired, the Bodies of Husbandmen being more strong and able, and more patient of Heat, Cold, and Hunger than any others; to which I add, That in the Civil Law, † of all other Arts, this of cultivating and improving Lands, is reckoned the first in the Order of Nature, and the most essential to the Life of Man; the most natural and general of all our Wants and Necessities being supplied, by drawing from the Earth the Fruits it may produce for Food and Raiment, and by the Nourishment and Care of Cattle: For which Reason, and in Consideration of these mighty Benefits to Church and State, from the Labour, Industry, and Improvements of Tenants, many valuable Rights, by the Laws and Usages of the Kingdom, have been given them: But my Business lying only with the Customary Lessees of Lands holden of the Church, by the Tenure of Three Lives and Twenty-one Years, I shall confine myself to them, and endeavour to shew,*

1. *THAT those Customary Tenants and their Assigns, by the Laws and Usages of this Realm, have a Right to renew their Leases at the usual Times of Renewal, on Payment of a reasonable Fine.*

* *Coke Lit.* 85.

† *Domat. Civ. Law.*

2. *THAT*

2. *THAT the Reasonableness of Fines ought not to be left to the Judgment or Discretion of those that are interested therein,*

3. *THAT the Parliament in all Times, have zealously interposed, to settle Disputes that have happened between the Clergy and Laity, about Fines and other Accounts: To which I shall add, some Considerations for settling those Fines, and the Disputes that have arisen about them.*

NOBODY is ignorant that *immemorial Custom* is one of the Foundations of the Laws of England. Lawyers of the greatest Authority write, *That Common Law is.* nothing but the common Custom of the Realm: † That common Usage, Custom and Practice of the Kingdom, is one of the main Constituents of the Law. ‡ That Time out of Memory of Man, giveth Right; and Bracton || affirms, That longa possessio parit jus possidendi.*

THE Authority of Customs and Usages is founded in this; it is always to be presumed, that what hath been observed, and consented to, for a long time, is useful, just, and for the public Utility, and therefore ought to be unalterable.

ON this Ground, Customs every where serve as Laws, and have the Force of Laws, because they have the same Object and End in View, that is, the publick Good, by *ascertaining Possessions to Purchasers, giving Peace and Quiet* to those whom others would disturb in their Rights, and preventing that infinite Confusion which would follow Uncertainty and the Property of Things, remaining upon a precarious and uncertain Foot.

* Pref. Dav. Rep.

† Litt. Tenure, S. 170.

‡ Ld. Hale's Analysis.

|| Bract. L. 1. c. 3.

OF this there can be no better Proof, nor any thing more pertinent to my Purpose, than in the Instance of Feudal Customs, which are Part of the Common Law of *England*, not by positive or written Laws, but by a general *Reception* and Use. The Book commonly call'd, * *Dr. and Student*, of great Authority in Law, proves this, and reckons up amongst the Rights which antient Custom hath introduced, the Feudal Customs or Rights of Descent, Escheat, the different Sorts of Tenures, Freeholds, as they are received amongst us; which agrees to the Principles of Fiefs or Fees, antecedent to the Time the Learned suppose 'em to have been here received, of which a late Author in his † *Introduction of Tenures*, gives us the following Account of their Original and Growth.

FIEFS or Lands of Inheritance (he saith) *were at first not Hereditary; but were originally Precarious, and held at the Will of the Lord: Then they became certain for one Year, and were some time after given for Life.* And then he gives an Account, how they became Hereditary, adding, *That tho' they were at first not Hereditary, yet it was unusual, and even thought hard, to reject the Heir of the former Feudatory or Tenant; and judges that the Tenant paid a Fine, or made some Acknowledgement in the Nature of a Relief for the Renewal of the Feud, † and that such Fine was originally paid, to secure the Succession, or Right of Renewal from the Lord.* From whence in Process of Time, *i. e.*

* *Dr. and Stud.* c. 7.

† *Intr. to Tenures*, p. 14.

‡ Feuds had several Denominations; while they were Precarious, they were called *Munera*; while they became Temporary and for Life, *Beneficia*; and were first called *Feuda*, when they began to be granted in Perpetuity, and not before.

about the Year * 1000, they grew to be Successional and Hereditary, as we call it; and all by the Force and Effect of Custom.

LET us now see what Custom and Usage have done for Copyhold Estates, to which Tenure the learned Father *Simon* compares the Customary Leases held of Spiritual Persons.

COPYHOLD Estates were originally held at the Will of the Lord, in the strict Sense of the Word; The Tenants were bound to the Performance of more slavish Services to the Lord than other feudal Tenants were obliged to, and not only their Effects, but their very Children belonged to the Lord; but in Consideration of the Benefit and Utility to the State, by their Labour and Improvements, and for the Quiet and Tranquility of their Possessions, which they had purchased, by Payment of Fines, and enjoyed a Succession for a long Course of Years, and in favour of Liberty, the common Law hath emancipated and made free their Persons, established a Succession, or rather Inheritance in their Estates. And now so privileged are they, saith my † Lord *Bacon*, that the Lord cannot put them out, and *all through Custom*: Nor hath it, to my Knowledge, ever been thought or complained of, that the Lords and Proprietors of Copyhold Estates were unjustly deprived of that arbitrary and mischievous Power which once they had.

IF now it will be admitted to me, that where there is the same Reason, there ought to be the same Construction or Law; it is very certain, that Customary Tenants of Spiritual Persons, have the

* This is imported by the Word *Feudum*, which was not in Use, 'till about that Year.

† Use of the Law, 43.

same Facts, the same meritorious Considerations to plead, that Customary Tenants by Copy have.

IN the first Place, the Customary Tenures for Three Lives and Twenty-one Years, for which Terms Spiritual Men, Colleges and Hospitals can grant their Estates, are equally immemorial with the Copyhold Tenure.

THE learned Father *Simon*, in his * Discourse concerning Revenues and other Antiquities of the Church, saith, that Churchmen, (in the first Ages, he means) *Let out their Land by a kind of Lease or Copyhold, called Convenientia*; by which *Convenientia* they let their Lands for *Three Lives to labour and improve, on Condition of a yearly Revenue*: And then remarks, it is still in Use in England, and he might have added, may be traced up higher than perhaps any other amongst us.

IN the Reign of King *Edgar*, at which Time even Fiefs or Fees are supposed not to be Hereditary, this Tenure or Holding for *Three Lives* in Church Lands after the Feudal Manner was in Use. There is a notable Pattern left of it, collected by Sir *H. Spelman*, wherein it appears, that † *Oswald* Bishop of *Worcester*, divided the Lands of his Church into divers Portions or Tenancies and granted them for *Three Lives*, obliging the Tenants to pay and perform divers Services to the Bishop, the Church and the Realm, *propter Beneficium illis præstitum*, as the Grant expresses it. For these Holdings were called *Beneficia*, after the Feudal Word then in use, that is, a *Beneficiary* Tenure, denoting thereby the Encouragement given to the Tenants to *cultivate and improve* the same. And then Sir *Harry* subjoins this Opinion,

* Rev. of the Ch. p. 50.

† Spel. P. W. in Feuds. 41, 2.

that this was the common Manner of Grants and Reservations in those Times for Life or *Three Lives*, and that so he finds them in the Abby Books.

THE Opinion of this Gentleman is, and always will be, of great Weight, and 'tis most certainly true ; but it is, I think, to be understood with a small Limitation, the common Manner of granting of Lands was more antiently for *Three Lives* only : But it must be own'd, that in the middle Times, the Tenure for *Twenty-one* Years crept in, and is now a *customary distinct* Holding by itself : Both these are mentioned in an old Statute, and the first that was made to strengthen and prevent a mischievous Practice to defeat and evade them : This was the Statute of 32 H. 8. c. 28. that vests in the Bishop Sole, a Power to make Leases, without Confirmation of the Dean and Chapter ; but it is with an expresse Proviso or Limitation, that such Leases to be made should not extend to *Above the Number of Twenty-one Years or Three Lives*, which is *declaratory*, and comes in *aid* of those *Customary Tenures*, as they stood at Common Law before the Act was made. They were fixed and created by a very wise Policy, to be an *immoveable Barrier* between the *Possessor* and the *Successor*, and have stood their Ground against many Attempts that have been made against them.—Both those *Customary Tenures* running on in their *separate* and *distinct* Channels without *Innovation*, have been found good and *beneficial*, *fitting* and *agreeable* to the Disposition of the People, and Circumstances of the Church, and were in Truth, *essentially* necessary to the *Subsistence* of it in every Age ; for that Reason they have been *confirmed* again and again by Parliament : Leases for *Three Lives* and *Twenty-one Years* to these *Tenants* and their *Assigns*, have

been *renewed, iterated, multiplied* and *continued* from immemorial Time, in a regular Succession to this Day, unless in some few Cases: There is no need to give Evidence of it, 'tis sufficiently understood by all, and from what hath been said, no one can deny it.

Now if the Rule, *Longa possessio parit Jus possidendi* can hold good in any Case; nay, if it hath prevailed in the largest Extent of the Word, can it be denied in this of a lower Degree, that these Tenants have acquired that *Jus possidendi*, or *Renewable Right*, not by the bare *Effects* of Time, long Possession and Usage only; but by *Purchase*, and the Payment of *Fines* in all Ages, to secure it to *them* and their *Assigns*? But there are other Arguments behind, and other Authorities to be cited to support this *renewable Tenant-Right*, by the *customary* Tenure for *Three Lives* or *Twenty-one* Years, and therefore I propose to lay them all together, and then to draw Inferences from the Whole, as may be proper.

THE Rule, *Longa possessio parit Jus possidendi*, it must be confessed, is infinitely more favourable to the Clergy than to others: In the Church, a *Possession* for Forty Years carries Right; to the Laity, Time beyond Memory. In the next Place, though 'tis opposed, 'tis yet undeniable, that in Point of Law, Custom and Usage have Power to bind Ecclesiastical Rights as well as Lay; and it gives great Strength and Assistance to my Argument, to observe that the first in *Fact*, are so bound in *stronger* Instances than the Case before us.

IN the Case of Tythes, it is well known to be a received Doctrine of the Church, an express Ground and Rule in the Canon Law, that *Jure Divino*, the Tenth, without any Abatement whatsoever, is due from our Estates, and no doubt the

Inference

Inference would be good, if the *Antecedent* could be proved; yet nobody is ignorant, that notwithstanding this Ground, the *infinite Struggles*, *Vigilance*, and *Law Suits* to prevent the *Growth* of Customs, Customs have got the better, and been too hard for all Opposition, and have not only *diminished* the Tenth in *every* Christian * Country in *Europe*; but have wrought a total Exemption from it in our own, † by *Appropriations* to Monasteries, by *Privilege* of particular Orders, by *Unity* of Possessions and otherwise: By the same Standard, Acts of Parliament have proceeded to regulate the Payment and setting out of Tythes; always directing it to be done according to *Custom* ‡ and *Usage*. The Inference is, if Custom hath prevailed against *Jure-divino Rights*, or those commonly so esteemed, *à fortiori*, it may be allowed to bind the *Temporal Rights* or *Possessions* of the Church, and create a *renewable Tenant-right Estate* in Tenants and Purchasers, paying the *accustomed Duties* and *Fines*.

IN Copyhold Estates holden of the Church, this *customary Tenancy* is well known there, the Admittance of an Heir, and Licence to alien, is not an *Arbitrary Thing*. In || Capite Lands holden of some Sees, whilst that Tenure continued, the *Admission* of an Heir, or *Licence* to alien, on *Payment* or *Tender* of a *reasonable Fine*, could not

* V. Selden of Tythes.

† 2 Inst. 652.

‡ V. Stat. 27 H. 8. c. 20. 31 H. 8. c. 10. 32 H. 8. c. 7.

|| R. Episc. Dunelm. &c. ———— Sciatis quod de gratia nostra specialiter & per finem decem librarum, Concessimus & licentiam damus R. de Bynchester quod ipse de Muneriis, de—, &c. quæ nobis tenentur in Capite seofare possit R. W. habendum & tenendum sibi & heredibus suis de nobis & Successoribus nostris per servitia inde debita & consueta. An. 5 R. 2. 10t. 27. ex parte Thef.

have been *refused*; and as to these other Estates of the Church, there are Acts and Proceedings of the King and Parliament, that in my Opinion prove the Tenants have the like Right: These fall under three Considerations;

1. *THE special Vigilance and Care of the Parliament to prevent these Tenant-Right Estates or Tenures, being weakened, defeated or destroyed.*

2. *IN not permitting Burthens and Payments to be imposed on them, beyond the Measure which Custom hath obliged them to.*

3. *BY obliging the Temporary Lords to renew according to antient Use.*

1. As to the special Vigilance and Care of the Parliament to preserve this Tenure: At the common Law before the enabling Statutes of 32 H. 8. c. 28. the Method that was used to purchase Renewals of Leases for Three Lives and Twenty-one Years, was first to pay the *accustomed Fines*, and get the Leases passed under the Bishop's Seal, after which they carried them to the Dean and Chapter to be confirmed, to whom also a small Fine was to be paid, which at length grew to exceed all Measure; some of the Tenants refused, and more were unable to pay; so their Leases for Three Lives or Twenty-one years, ran on *unconfirmed*; the Consequence was, that on the Death or Translation of the Bishop, their Leases were void, and they were defeated of their Tenures and Purchases by the Successor. This the Parliament observ'd, and then that inconvenient Power of Confirmation was soon taken from the Dean and Chapter, and a Power of making Leases for Three Lives and Twenty-one Years, was vested in the Bishop Sole: And that Posterity might not be ignorant of the
Ground

Ground of this Proceeding, it is exprefs'd in the Preamble of that Act, in memorable and pathetick Terms, *viz.* That the *Tenants*, * *after the Deaths or Resignation of their Lessors, were cruelly expelled and put out of their Farms by the Successors, although they had given and paid great Fines and Sums for the same, and also had been at great Costs and Charges, as well in and about great Reparations and Buildings upon their Farms, as otherwise;* so the Bishop, Sole, was enabled to make Leases; but with an exprefs Limitation, that this Power should not extend *To any Lease to be made above the Number of Twenty-one Years, or Three Lives at the most, as heretofore was observed.* Thus the Tenants were secured of the Enjoyment of their *Purchases and customary Tenure* for Three Lives and Twenty-one Years, by the seasonable Care of the Parliament. But no sooner was this *severe Discipline* over with the Tenants, and nothing further was to be done that Way; but, pardon the Lowness of the Expression, the Game was to be *play'd* against the Successor, which could not be done, but in the same View of defeating and pulling down the Customary Tenures for Three Lives and Twenty-one Years.—These, indeed, *cramp'd*, and were design'd to cramp, those who should have *Aims* to *inrich* themselves at the *Expense* of their Successors; and for this Reason it is very plain by the enabling Act, that the Bishop's Authority Sole, to make Leases, was not to extend to Leases *above the Number of Twenty-one Years or Three Lives at the most:* But Evasions were some how or other found out, and Leases for Forty, Fifty, Sixty, and Seventy Years were made, upon large and extraordinary Fines, be-

* V. Stat. 32 H. 8. c. 28.

tween the 32d of *H. 8.* and 13th *Eliz.* containing Twenty-six Years. In this Period it was, that long and mischievous Leases had their Beginning, which we have known or have heard of, against which a cotemporary Writer, Mr. *Cambden*, in his History of Queen *Elizabeth*, inveighs very freely, as well as against the Avarice of those that made them, who he saith, * as if *born for themselves alone*, made these *long and unreasonable Leases, to the Impoverishment of their Successors*, or to the like Effect; and I add, in Violation of the said Customary Tenures, which the Common Law had so wisely contrived and calculated for the Benefit of the Church in every Age; for remedy whereof, and effectually to put a Stop to this Practice in all future Times, the † Statutes of 1 *Eliz.* and 13 *Eliz.* were made, by which ‡ Spiritual Persons are restrained and disabled to make Leases, *other than for the Term of Twenty-one Years or Three Lives*; by which these old Tenures are firmly established, and never more to be shaken; mischievous Alienations are prevented, which were made, it may be, upon Pretence that Sole and Aggregate Bodies had a Fee in their Estates, whereas they have only a *Fee to Retain* and go in || *Succession*; but not to *Aliene*, otherwise than in the *customary Manner* now used.

AFTER which I hear of no other Attempt to disturb this Tenure, until the Restoration, and then another Experiment was tried.

* *Cambden's Eliz.* † 1 *Eliz.* 13 *Eliz.* c. 10.

‡ Abbot, Prior, Bishop, Dean, Archdeacon, Prebend, Parson, Vicar, or any other Sole Corporation that is seized in *Auter Droit*, cannot divest any Fee which is vested in their House or Church. Co. Lit. 103.

|| Hob. 259.

ON the 15th Day of *February*, 1661, a Bill was brought in to confirm a Lease of the *King's-head Tavern* in *Chancery-Lane*, made by the Lord Bishop of *Ely*, for the Term of *Forty Years*, unto *Elizabeth, Barbara, and Frances Barker*, and was this Day read the first Time ; and the House taking into Consideration, that it was not in the Power of the said Bishop to grant a Lease for the Term of *Forty Years* ; but only for *Twenty-one Years* or *Three Lives* ; and that Mrs. *Barker* expecting the Lease to be good, had paid a considerable Fine, and Covenanted to New-build the House ;

ORDERED, That Mr. *Ashburnham* and others do attend the Lord Bishop of *Ely*, and desire him from this House, to make Mrs. *Barker* a Lease of the said House, called the *King's-head Tavern*, for *Three Lives*, and that his Lordship would take Consideration of the Covenant for new building the House, and use Mrs. *Barker* reasonably.

ON the 27th Day of *February*, 1661. Mr. *Ashburnham* reports, That according to the Vote of this House, he and Mr. *Clarke* had attended the Lord Bishop of *Ely*, and acquainted him with the Desires of this House, to make Mrs. *Barker* a Lease of the *King's-head Tavern* in *Chancery-Lane* for *Three Lives*, and to take Consideration of the Covenant for new building the House, and use Mrs. *Barker* reasonably ; and that his Lordship had readily consented to make a Lease for *Three Lives* to Mrs. *Barker*, at the Fine agreed to, which was so moderate, that it did not exceed four Years Value, and therefore there was no Cause to remit any thing of the Fine, or mitigate the Covenant for new building the House with Brick ; with
which

which Answer of the Lord Bishop of *Ely* the House was well satisfied.

'Tis easy to see, that the Covenant here mentioned to new *build*, and the Pretence of a great Fine being paid, was purposely thrown in to insinuate a reasonable Cause for passing the Bill; but it would not go down, the Parliament refused to make a Precedent, that might soon *grow* up to the *Subversion* of all the Customary Freehold Estates, holden of the Church for *Three Lives*; so rejected the Bill.

THE next thing to be mentioned, is the Care of the Parliament in not permitting *Burthens* and *Payments* to be imposed on the Tenants, beyond that *Measure* which *Custom* hath established.

IN the 26th H. 8. a Tenth was granted by the Clergy out of Ecclesiastical Benefices and Preferments; after which, Inventions were used to lay the *Burthen* of this Tax upon the Customary Estates and Purchases of the Tenants, by *drawing* them into *Covenants* and *Agreements* for that Purpose: This soon gave a general Uneasiness, and came at last to the Ears of the Parliament, by whom it was Enacted, * " That no Lessee of
 " any Archbishop, Bishop, Spiritual Per-
 " son or Persons, Body Corporate or Politick,
 " should be *Chargeable* to pay the same, by rea-
 " son of any *Covenants*, *Bargain*, *Bond*, *Condi-*
 " *tion*, *Clause of Re-entry* or other Things before
 " made and concluded; but that the *Lessors*
 " should pay the same according to the Grant
 " thereof." This, I think, fully proves, that the Lessors cannot charge these Customary Estates with *Uncustomary* Burthens and Payments, and what is

* Stat. 27 H. 8. c. 17.

yet more *Memorable*, they knew that Men are not *willingly* drawn into Covenants and Agreements to their Disadvantage, and therefore, with great Equity and Justice, *rescinded* and made them *void*: It is also, in my Opinion, a Precedent worthy to be followed at *this Time*, for Relief of those who have been *forced* or *drawn* into Consents to part with their *Freeholds*, and to take back Leases for *Twenty-one* Years in *Lieu*; which most certainly never were effected by *fair and due Means*.

THE third Consideration, relates to certain Proceedings in Parliament and before the King and Council, for obliging Ecclesiastical Lords to renew according to *antient Use*.

ON the Tenth of *March*, 1661, a Petition of Sir *Thomas Woodcock* was read in the House of Commons, wherein he complains, that he being by several *mean Assignments* interested in a Lease for *Three Lives*, of a Farm called *Stretbam* in *Sussex*, belonging to the Bishoprick of *Chichester*, upon which above One Thousand Pounds had been laid out in *Building* and *Improvement*, and that two of the Lives in the Lease died in the Time of the War, and the Third in *February* 1659; and that he thereupon did make *Application* to the Bishop *as soon* as he was in a *Capacity* to *renew* the said Lease; but he *refused* so to do, and pretended he had granted the same to *his Son*.

ORDERED, *That the Case of Sir Thomas Woodcock be recommended from this House to His Majesty's Commissioners appointed in this Behalf, to treat between the Lord Bishop of Chichester and Sir Thomas Woodcock, and reconcile and settle the Difference between them if they can; if not, to report their Opinion therein to the House: And it is also recommended to the said Bishop from this House,*

House, to renew the Lease of the Farm in Question to Sir Thomas Woodcock, at a moderate Fine, according to ancient Use.

WHAT Answer was made in this Case, I do not find by my Calender of the Journals; but to be sure when the *Parliament spoke*, a satisfactory Answer was given.

NOR was the King and Council at this Time, amidst all their Deliberations in favour of the Church, and for restoring the Government by Bishops, forgetful of the Tenants; Commissioners, it seems, to settle Disputes in some Cases were appointed, and in others general, Recommenda-tory * Orders issued to certain Bishops, *to continue their antient Tenants, their Heirs, and Representatives in their Estates, upon the usual and customary Terms, not to advance their Fines, and to use them moderately.*

THUS far on the Side of this *renewable Right*, there is the Authority and Sanction of the King and Parliament, manifestly grounded in this solid Principle, that *Longa Possessio parit Jus possidendi*, by such customary Forms, as that Possession hath been usually had and enjoyed: And of this the Clergy seem very sensible, by the studied Care and Secrecy that is used for preventing of Precedents; and not letting Possessions go on too long, for fear of *Usages*, where *Usages* do not serve their *Purposes*: But in favour of their *Rights* and *Authority*, then Usage is made a *fundamental Rule*; and from their Writings I am furnished with Arguments so strong and conclusive to the present question, and in Terms and Expressions so much better than I can pretend to use, that I will cite

* MSS. penes J. Spereman, Arm.

them presently, and then rest this Point upon the Whole.

THE Right Reverend Author * of the *Codex Jur. Ecclesiast. Anglicani*, writes, *That the only Caution to be given, in order to prevent the Revenues of the Church from Diminution, is against the Growth of Modus's or Customs, which (he saith) is to be feared are growing by the Inadvertency of the Clergy, in acquiescing in the same Agreement from one Successor to another, and from hence you have the Reason of that Conduct which most Men have observed, that apply for Renewals : If you beg for Moderation, and that antient Usages and former Precedents may be regarded ; the Answer every where is, Talk not of Customs and Usages, they are no guides to us ; we know not what our Predecessors did ; we have no Books of Entry of their Acts and Proceedings : And so violently is this Spirit got abroad, and with such Temerity do some Bodies act, that they have lately contrived an † Oath to be taken by each Member, and also by their Register, not to discover their Secrets. How, and what Consequences have shewn themselves openly in divers Parts ; how many have already felt the Effects of them, and what a Foundation is laying for Differences which every good Man would avoid, a Gentleman of Character, I am assured, is preparing to give the World an Account.*

BUT on the other side, Dr. *Stillington*, late Bishop of *Worcester*, in his *Ecclesiastical Cases*, arguing for the Rights and Authority of the Church,

* 2 V. 706.

† Antient and Modern State of the County Palatine of *Durham*, p. 117.

‡ 2 V. Eccl. c. 46.

from the Reception and Use of the Canon Law in England, insists, and with him the Right Reverend Prelate above-named agrees, That *Use and Custom* amongst us generally received, doth *obtinere vim legis*. — And further, Dr *Stillingfleet*, that the * Foundation of Law is *general Practice and Allowance*; — And that though not *Legal* in the Beginning, yet being generally received and allowed, becomes thereby a Law, — That if † Customs be such as are derived from primitive Times, and continue in Practice, there is no Reason to oppose, but rather to comply with them. — And again, his Opinion is, That it is for the common Interest of Mankind, that some Bounds be fixed to all Claims of Right, because otherwise Men will be liable to perpetual Disturbance: ‡ And, lastly, That it is agreeable to the Foundations of Law, that a long continued Possession should carry Right along with it, — and cites *Braetons Rule, Longa Possessio parit Jus possidendi*.

THE Authority of this most learned Prelate is of such *Weight*, his Reasoning and Sentiments so clear, and besides so exactly apply and fit themselves to the Question, that without manifest Injury to it, I could not omit them. The Books referred to, shew him to be a Man of a vast Compass of Learning, and one that had gone deep into the Principles and Precepts of the Civil and Canon Laws; Both uniform in this, that by the Agency and Force of Custom, Titles and Charges upon Estates are raised and created, and of Necessity will be so to the End of the World, without distinguishing between the Rights of any Order of

* 2 V. Eccl. Cases 349, 350.

† Ib. 381.

‡ 2 V. 331.

Men whatsoever. Of Custom, it is every where affirmed to be * *altera Lex*.—That Usage, † *sufficit pro Jure*, and even voluntary Acts, by being often repeated, become at length obliging and compulsory. As a Man, ‡ who *first* of his own Benevolence repaired a Bridge or Highway, by *often* using so to do, was afterwards compelled to do it: It gives Ability to Infants in some Places, to grant away their Estates at the Age of Fifteen; by *Feoffments*.—And in others, as to the Citizens of London, to devise them away in *Mortmain*.—Again, Estates or Tenancies for *Life*, as || *durante Viduitate*, in Dower, and by the Courtesy, are raised by it; and what is more, it hath Power to create Inheritances; as it was §. resolved in *Brown's Case*, Mich. 23. 24. *Eliz.* But to make an End of this Point;

IN the 26th of Queen *Elizabeth*, it is laid down, very apposite to this Case, with regard to other Customary ¶ Lands holden of the Church, that if a Grant be made by a *Bishop* or *Prebend*, by *Copy* (which many Times be for *Three Lives*) although the *Bishop* or *Prebend* is but *Dominus pro tempore*, yet the Grant is good, and the Estate of the Grantee doth not cease, when the Estate of the Temporary Lord determines; for this Reason, because the Tenant or Lessee by *Copy*, doth not derive his Estate out of the Estate of the Grantor only;—but he is

* *Brown's c. 4. rep. 21.*

† *Longum tempus & longus usus quæ excedit memoria hominum, sufficit pro Jure.*—*Longa possessio est jus pacis.* *Bracton. fō. 50.*

‡ 27 Aff. pl. 8. Br. prefcr. pl. 49.

|| Sir Ed. Coke's Tr. of Cop. 73, 75.

§ 4 Rep. 21. b.

¶ Clark's and Pennysfather 4 rep. 22. b.

*in by the Custom, without regard to the Estate or Person of the Grantor; and if the Temporalities come into the King's Hand * by Seizure, the Customary Estate or Tenure remains, the Tenant shall have Aid of the King, and the renewable or admittable Right incident to, or annexed to his Estate. These Lands holden of the Church you see, by Use and Circumstances, have changed their original Nature and Condition, advanced from a Base and Servile to a Frank-Tenure; the Tenants from bond are now become free, their Fines, heretofore uncertain, are now become certain in most Places, and from being liable to Expulsion, can't now be expelled.*

THUS stands the Case, as to one Part of the Church's Tenants, who formerly were of *low* Degree; and as to the *others*, on whose Behalf I am speaking, who always were *free*; hard! very hard! is *their Condition*, if they have not the *same* Security, and *renewable* Right in their Estates, as the *others now* have. If there was a Reason to give *renewable* Rights to Estates by Copy, there is much stronger Reason to give it to those by Lease; because I am very sure the Lands and Tenure of the Tenants by *Lease*, are as old as those by *Copy*: And, secondly, because a much *greater* Part of the Property and Estates of the People of *England* now depend upon the Lease-hold Estates, than did upon the Lands by Copy; and should it be otherwise, the Tenants by Lease will not only *not* have acquired any thing by *Length of Time* and *immemorial Usage*, but, in Fact, will be placed almost in that State of Bondage, from which the Tenants by Copy have got *clear*; from *Free* they will become

* 15 H. 7. 10. 27 H. 8. 28.

Bond; and the *lowest* Tenancy by *Copy* of Church Lands, will be *much* better than one by *Lease* for Lives of the *Free*.

BUT surely there is not the least Foundation or Pretence for this; the Right of the last is a Right equally *acknowledged* by the *Practice* of the Ages past: The Parliament, *two* Centuries ago, took off the *Shackles* and *hard* Covenants that were then *prepared* by the Grantors to *impose* on them, put an *End* to the *Cruelty* wherewith they were *expulsed* from their *Customary Estates*, and in modern Times the King and Parliament have asserted their *renewable* Right in Words at length; and therefore 'tis very hard, and I think, a little too *Enterprizing* in this Age to dispute it; for sure there is the same Reason to dispute, that their Tenants by *Copy* have it not, and I have good Proof that some have lately been so indiscreet.

BUT all I contend for is, that if Ecclesiastical Tenants by *Copy*, have acquired by *Usage* and *Length* of Time, a *renewable Right* on Descents or Surrenders, besides many other Advantages, the *same Usage* and *Length* of Time, may give to the other Tenants by *Lease* a *renewable Right* only; of which it is some further Proof to remember, that they are compared to, and spoken of by learned Writers as of *Copyholds*, and in the Law of *England*, there is *now* no *Difference* between them in this Respect; that in pleading * or making Title, both the *Copyhold* and the *Leasehold* Title are, and always may be alledged as *Grants*, and at this Day have divers other Properties in Common.

AND as to the Considerations, that raise and create this Right, for Considerations powerfully ope-

* 4 Rep. 22. b.

ate in the *Guidance* and *Direction* of *Rights* by Custom, they are *many*, and as *great*, I dare affirm, as Tenants by *Copy* can pretend to: On the one hand, that the Tenures whereon 'tis founded, have been *Beneficial*, nay, *essentially* Necessary to the *Subsistence* of the Church, hath been proved already; and on the other, that a continuing Consideration from Age to Age hath been paid by many Millions in Fines, to *purchase* and secure it, no Man I suppose will deny; add to this, that from the *Labour* and *Purses* of these Tenants by *Lease*, all Taxes and Charges to the State for their Estates have been *paid* and *borne*; *vast Tracts* of barren Heath and waste Ground *improved*, and by *Building*, *Rebuilding*, *Planting*, and other *visible Improvements*, the *Riches* and *Splendor* of the Kingdom, and the *Revenues* of the Church have been exceedingly increased; and at this Day, instead of a *Beneficiary* Tenure, every one knows that the Tenants of these Lands *purchase* them at a *Rate* as *dear* in Proportion as *Fee-simple* Lands, and at the *same* Rate, Time out of Mind, have *passed* them *off* to their *Wives* and *Children* in *Marriage* Settlements. Then what do the Tenants claim or get? do they claim or get any Thing more than what common Equity, common Conscience and Honesty would adjudge to them? And after all, how infinitely *unequal* and *weaker* be those Customs or Usages, that are pretended to acquire Rights to the Clergy? Forty Years makes a good Custom for them, nay, by shewing *one single* * *Instance*, it is said, a Custom will be *presumed* in particular *Cases* in favour of the Church: It is also advanced on better

* 2 Vol. Cod. Jur. Eccl. Ang. tit. Revenues.

Grounds, that one *single* Presentation to a *Donative*, *divests* the *Lay Patron* or Proprietor of his Right, and *carries* it away to the Bishop to visit, present and exercise Jurisdiction for ever. How *slight* and *absurd* soever these Things may seem, yet if they be so, 'tis to be hoped *immemorial Usage* will be suffered to *carry Rights*, purchased *Rights*, to the Laity, and that the Conclusion is necessary from the Whole :

THAT in England there hath been a Custom, Time out of Mind, fortified by divers Acts of Parliament, to grant the Temporal Estates of the Church to Tenants by the Tenure, or for the Terms of Three Lives and Twenty-one Years, and that for all the Time aforesaid, those Tenants, their Heirs, Representatives, or Assigns, have been admitted to renew their respective Possessions, according to such Custom, on Payment of Customary reasonable Fines and other Duties : And that from thence another Conclusion is necessary, viz. That by the Laws and Usages of this Realm, those Tenants have a renewable Right, and that the Grantors and their Successors are compellable to renew, according to the said Custom and Usage of the Kingdom. — And were it otherwise, and that the Grantors might dispose of their Estates to their Families, and who else they pleased, what a Condition would all Men be in, who have purchased these Estates? and have laid out great Sums in Improvements? What a Condition are the Ladies in, who have Marriage Settlements of these Lands, and are Purchasers for a valuable Consideration for Themselves and Children, many of which have no other Maintenance or Subsistence? What will become of all those who have bound and engaged themselves by Covenants to renew from Time to Time, with their Under-Lessees, as from Time im-

D 3

memorial

memorial hath been practis'd? All are without Remedy! Without having a *perfect* Assurance of a *Right of Renewal*, and of a *sure and peaceable Possession* to follow, would not all Things go *backwards*, and all *Improvements* be *stopp'd*? And, lastly, what other *Confusion*, what *Disquiet* and *Trouble* in the *State*, would follow, I leave to others, who turn their Thoughts to this Subject, to judge: But 'tis ever to be remember'd, that *Bracton* gives the Rule — *Longo Possessio parit Jus possidendi*.

THE next Point in order to be considered, will take up but a very little Time, which is, *That Fines ought not to be imposed or assessed by those that are interested therein*.

THE *Tallages* and *Fines* imposed and paid of late Years for *Renewals*, have been so *excessive* and *severe*, and are, indeed, so very *dreadful* to Liberty, that 'tis of *publick* Concern, to enquire on what *Ground* they stand. It appears by an Account before me, collected by a Gentleman of Probity, that within Twelve Years last past, the *ordinary* Measure of *Fining*, is *treble* the Value of the *last* Fine; in *some* Places they *rise* from 100 *l.* to 300 *l.* from 300 *l.* to 900 *l.* In others, *screwed up* from 400 *l.* to 1600 *l.* and up as *high* as 3000 *l.*; And further, which *strikes* one with *Astonishment*, from 100 *l.* to 900 *l.* all which *Degrees* of *Fining*, the Paper before me represents.

THE *Intent* and *Meaning* of *Fines* for *Renewals*, as Lawyers term it, is, *pro* * *Renovatione Possessionis*, to *purchase*, *continue* and *perpetuate* a *successive Possession* in the Land, but not to *create* the *Tenure*; they are payable on *Death* or *Alienation*, and are

* Coke's Tr. on Cop. 31 32.

of great *Antiquity*; and therefore I take it for granted, that Fines in the present Case are *claimed* by Custom; First, because Fines (moderate Fines I mean) have, in Fact, been Time out of Mind accustomedly allowed to the Church: In the next Place, because I find while Tenures remained at Common Law, there were Fines *annexed* to particular *Tenures*, *corresponding* in *Nature* and *Quality* to these of ours, *Pro renovatione possessionis*, called a *Relief*, and was *more or less*, according to the *Custom* of *particular* Places: As for Example; The *Fine* or *Relief* *annexed* to Lands holden by the *Tenure* of Knight's Service, *Pro renovatione possessionis*, was *fixed* by *Custom* at a *fourth* Part of the Year's Profit; that is to say, if the Tenant hold an intire Knight's Fee, *viz.* Twenty pounds *per Annum*, he paid Five Pounds for his *Renewal*; if half a Fee, Fifty Shilings.

ANOTHER Fine of the same Sort, was and still is in Use in Soccage Tenures: There on Death or Alienation, is paid, *pro renovatione possessionis*, in some Places *half* a Year, and in others a *Year's Profit*, according to *Custom*; which Fines * Sir *Edward Coke* is pleased to call, *The Key, that opens the Gate to give the Heir free Passage to his Possession or Estate*. So that it appears, that those Fines were governed by *Custom*; and I believe it may be traced from Expressions in Records, that the *Customary Fine* paid to the Church, *Pro renovatione possessionis*, was antiently *half* a Year's Profit, and *less*.

Now if it be agreed, as it must, that these Fines are claimed by *Custom*, the Point will be reduced into a *narrow* Compass; it must be agreed, that

* *Coke's Treat. of Cop.* 32, 22.

by the Rule of Law, *Custom* or *Customary Fines* ought to be *reasonable*, and that the Law abhors Excesses of all Kinds.

— If there be a Spiritual or Lay-man (for there is no Difference) Lord of a Manor, wherein a *Custom* is, that every House shall pay a *Fine* of Twelve Pounds, and the Tenant buildeth a *New House*, and the Lord *insists* upon a *Fine* for the *New House*, * Sir *Edward Coke* delivers it for *Law*, That the Tenant shall not be *obliged* to pay a *Fine* for the *new House*, or *new Improvement*, for *Custom* cannot, with any *Reason* or *Sense*, extend to Things *newly* created ; and besides, 'tis a Piece of *natural Injustice*, to take from a Man any Part of that which he hath *acquired* by his own *Labour*, *Industry* and *Expence*. Another thing also will be agreed to me, that *Certainty* is so great a *Part* of *Reason*, and of such Account in *Law*, that an *uncertain Customary Fine* cannot, in a liberal Use of the Word, be said to be *reasonable* : Lawyers, of some Causes, say, That † *Causa vaga & incerta non est rationabilis*.

— So I suppose it is as true to say, That *Finis vaga & incerta non est rationabilis* ; and though at this Day in some Few places, *Fines* in common Parlance, are called *uncertain* ; yet the *Law*, the Mother and Nurse of *Quiet* and *Repose*, to prevent *Oppression*, hath *reserved* to itself, in case of Differences, to *determine* the *Certainty*, or *Reasonableness* of the *Fine*, even in *Cases* of the *Church* ; as if a *Bishop* or *Layman* be Lord of a Manor, where the *Fines* are reputed *uncertain*, if *unreasonable* *Fines* are demanded, the Tenants may *refuse* to

* *Coke's Treat. on Cop.* 75.

† 1 *Lev.* 296. 1 *V. Ecc. Cases Resignations* 43.

pay, and it shall be determined by the Opinion of the Justices if the Fine be * *reasonable* or not. If this is so as to *one* Part of the Church's Tenants, why not as to *all others*? Is it not against *common Equity*, that the Tenants, on whose Behalf I write, *infinitely* greater in *Number* and *Value*, and the *Chief* of the *Nobility* and *Gentry* in *England*, should be put upon a *worse* Foot?

IN the worst of Times it was far better; when the Tenants of the King and others, were *over-run* with Fines and Prestations, all or most of them now *happily* abolished, the Law provided a *common Umpire* to judge between the *King* and his *Tenants*: If the Assessor *over-rated* any Man for a *Fine* or *Tallage*, † he had a *Writ* directed to the Barons of the *Exchequer*, where the Rents and Fines were received, to *relieve* him *according to Equity*. In like manner in the Church, a *Third* Person was appointed to judge between the Clergy and their Tenants.

THE Town or City of *Salisbury* being antient *Demefne*, was granted by the Crown to the Church of *Salisbury*, and it seems as if the Church could not take Fines of the Citizens or Tenants, without a Licence from the Crown, and therefore in the ‡ 11th of *H. 3.* a Licence was applied for, and granted, *viz.* That the Bishop and his Successors, for the *pressing-Occasion* of the Church, might *take a Tallage* or *reasonable* Fine of the Citizens; but with this *Limitation*, at *such* Time only when the King should take *Tallage* or *Fines* of his own Tenants,

* Resolved Mich. 42. & 43 Eliz. 4. rep. 27, 6.

† Mad. Excheq. 518.

‡ In Chart. H. 3. V. Inspex Pat. 1 E. 4.

and

and not then neither, it is to be understood, unless there was a *pressing Occasion* for the Church ; but then the Sheriff was commanded by Writ to *Assess*, and see it was *reasonable*. This was the antient Care and Policy of the Law, to *destrain* and *tye up* the Hands of those that were *interested* in Fines, which agrees with a *fundamental Maxim* in all Laws, *That no man ought to be his own Judge*.

ON the same Principle, the Law, with respect to the Clergy, restrains the Laity ; no man by Law may be his *own Tyther*, or *set out* his Tythes, *without the View and Knowledge* of the * Parson ; for was it otherwise, my Lord *Hobart* observes, *Men would Tythe as they list* : And for the *self same Reason* I contend, that the Clergy ought not to be their own *Fine or Tax-Masters*, for then they will fine their Tenants as they list.

THERE is no need of citing other Authorities upon this Head, that a Man ought not to be his *own Judge* ; it *strikes every Man* at first *View*, and *forces itself* upon the Understandings of Men whether they will or no. It is something like *Liberty*, that *proves itself*, and he that will impose *Servitude* upon us, or, which is the same Thing, *pretend a Right to impose unreasonable Fines and Tallages* upon us, must *prove it if he can* ; and therefore I reckon it is now fully made out, in the Case before us, *That Fines ought not to be assessed or imposed by those that are Interested therein* : Dr. *Stillingfleet* himself can acknowledge this Truth when he is arguing with the Quakers ; there, according to his Judgment, in † *Matters of Interest*, Men are the

* Hob. 107.

† 1. V. Eccl. Cases, p. 261.

worst Judges in their *own* Case ; he means the *Best* for themselves, and the *Worst* for others.

THAT which in the third Place comes to be considered, is, *That the Parliament, in all Times, have interposed to settle Disputes relating to the Church, and between the Clergy and Laity, when-ever they have happened to arise.*

THE Remembrance of *past* Things, is *sometimes* of Use and Example, and is the *more* necessary at this Time, because I hear it ask'd, Are not there Difficulties and Discouragements in the Way ? Is this a *proper* Time for applying to Parliament to *settle* the Fines ? Will it not *offend* some of great Interest and Authority, of great Weight and Countenance in the State ?

To this I answer ; Most certainly it will *offend* ; but if you stay for a Time when it will not, you may stay *long enough*. He that looks back into Affairs, will find our *Popish* and *Protestant* Ancestors *often* gave *great* and *grievous* Offence this Way ; but for all that, the *People* were *redressed*.

AT the Parliament holden in the * 3d Year of R. 2. a Bill was exhibited by the Commons against the Clergy, with many *bitter Words*, for the ill-disposing of Dignities, Offices, Cannonries, Prebends, and other Benefices in their Gifts, at which the Bishops took *great Offence*, and *absented* themselves ; but notwithstanding, the King, by the Advice of the Lords *Temporal*, passed the Bill.

IN the same Parliament, great † Complaint was made of *Extortions* committed by the Bishops and other Officers, and thereupon a Bill was framed,

* Inst. 300.

† Rot. Parl. 3 R. 2. 28. c. 40. V. 7 R. c. 12.

That

That *Justices* of the *Peace* might enquire thereof, and the *Form* of a *Commission* desired to be enacted. The Prelates made their *Protestation* against it, *whereunto* it was reply'd for the King, That *neither* for their said *Protestation*, nor other *Words* in their *Behalf*, the King would not stay to give *Justice* in that and all other *Cases*, as was used to be done in *Times* past, and was bound to do by *Virtue* of his *Oath* made at his *Coronation*. Whereupon without the Prelates, the *Act* and *Commission* passed as was desired.

AGAIN, in the Parliament which began 21 *H.* 8. as soon as Sir *Thomas Audley* was chosen *Speaker*, the *Commons*, offended, by taking into *Consideration* divers *Grievances* wherewith the *Spirituality* had oppressed them, and amongst the rest, the settling and reducing excessive *Fines* which *Ordinaries* took for *Probats* of *Testaments*; Sir *Henry Guilford*, *Comptroller* of the *Houshold*, upon his *Fidelity*, in open Parliament, declared, That he and other *Executors* to Sir *William Compton*, paid for the *Probat* of his *Will* One thousand *Marks Sterling*.

ANOTHER Article was, the extream *Exactions* used by the lesser *Clergy* in taking of *Mortuaries*, or *Presents* or *Fines*, in lieu of a *Mortuary*. — For it is said, the *Children* of the *Defunct* might all dye for *Hunger*, and go a *Begging*, rather than they of *Charity* would give to them the *Cow*, which the dead *Man* owed, if he had but only one.

Upon these *Heads*, the *House* ordered the *Lawyers* to draw up two *Bills*, which accordingly was done, and the *Mortuary* Bill was sent up first to the *Lords*, — To this Bill, saith * *Hol-*

* *H.* 8. p. 913.

linſhead, the Spiritual Lords made a *fair Face*, ſaying, *Surely* Priests and Curates took *more* than they ſhould, and therefore it was *well* done to take ſome *reasonable* Order : “ This they ſpoke, “ continues he, becauſe it touched them *little* ; “ but two Days after, when the Bill ; concerning “ Probat of Testaments came up, all in general “ *frowned* and *grunted*, for that *touched* their “ Profit. One of them ſaid, and was Juſtly queſ- “ tion’d for ſaying, the *Commons lacked Faith* ; a “ coarſe old Popiſh Phraſe, ever flung at the “ Laity when they gave *Offence*, but at this Day “ *reform’d* into a Word of more Purity and “ Grace, and that is *Infidel* or *Infidelity*. And “ when Reſort was had to Uſage and Preſcrip- “ tion for taking thoſe exceſſive Fees or Fines “ (though certain it is * 2 s. 6 d. was the legal “ Fee) a Gentleman of *Gray’s-Inn* answered, in “ my Opinion, *Intemperately* enough — The “ *Uſage* has ever been for *Thieves* to rob on *Shoot- “ er’s-Hill*. — *Ergo*, it is lawful.” To be ſhort ; The Bill paſſed in the End, with ſome Qualifications, by the Aſſent of the Spiritual Lords ; but, ſaith the Hiſtorian, *fore* againſt their Minds,

* Les communes prient que lon per la ley d’Angleterre en temps de votre noble Progenitors ordeigne que nul ordinarie del ſeint, Eglise del Realm prenderoit d’aucun Executors del Testament de leur Testators pur meſme la Testament & pur l’acquit- tance, en celle partie Affaire, forſque 2 s. 6 d. & ore ils prendront 100 l. & aucun foits 40 l. & 20 l prient que ſils prendront plus pur ceo que 2 s. 6 d. ils peideront diſe foits a tant que ils iſſint priſont — Reſpons, Le Roy ad Charge les Seigneurs Spiritual de ordeigne Redemie & ſil ne facent le Roy le volt avoir bien en Memorie & le faier amender en temps avener. Rot. Parl. 1. H. 5. Nu. 23. v. Rot. Parl. 2 & 3 H. 5. Nu. 47. v. Eliz. Rot. Parl. 45. E. the like Petitions.

NOR hath the Case been otherwise since the Reformation. * They would not consent to the Act of Conformity made the 1st of E. 6. nor to the Act of Supremacy pass'd 1 Eliz. The disabling Acts of that Reign restraining them from doing Hurt and Prejudice to their Successors, were opposed; and so was a modern † Act, by which the Writ *de Hæretico Comburendo*, and all Punishment by Death, in pursuance of Ecclesiastical Censures, are abolished.

BY these and several other Acts before-mentioned, together with such as are referred to in the † Margin, it is *abundantly Evident*, that in the Times of the *grosslest* Popery, and *since*, Parliaments were *ready* and *durst* always appear with Zeal to defend, as well the *Rights* of the Church as the *People*, though *sure to give Offence*: Acts of Parliament were then, as they are now, looked upon as *unnecessary Assurances*, and that the Clergy are the *best Judges of the Methods for promoting the Interest of the Church in* || *all Kinds*: To which, all I will say, is, that we have *their word* for it, indeed; but for my own Part, I do not remember any Parliament that *thought* so. But I cannot pass over the Doctrine of *unnecessary Assurances*, without observing, that it is to the *Assurance* of Acts of Parliament that have, and might be mentioned, (which *deserve*, in my Opinion, the *highest Ho-*

* Whitlock Mem. 31.

† Stat. 29. Car. 2. c. 9.

‡ 4 E. 2. lib. Parl. fol. 86. Rot. Parl. 17 E. 3. Art. 9 Rot. Parl. 17 E. 3. n. 52. Rot. Parl. 18 E. 3. n. 12. Rot. Parl. 21 E. 3. Art. 48. Rot. Parl. 25 E. 3. n. 37. Rot. Parl. 45 E. 3. n. 15. Fin. the Print. c. 3. Rot. Parl. 2 H. 5. n. 5.

|| Pref. to the Cod. Jur. Eccl. Anglican.

nour that *Posterity* can *bestow*) we owe the Reformation of the *Church*, and to the same *Assistance* that the *Beauty* and *Figure* of it since hath not *miserably* been *defaced*, and yet *necessary* as those Acts were, it was their *Fate*, at the Times they passed, commonly to *Offend*; and therefore it cannot be expected, without a *Miracle*, that any thing now can be offered, but *some* will take *Offence* : But if your Cause is *just*, if it is of *publick* Concernment to settle and restrain *excessive Fines*, and to *confirm* your *antient* Rights, as all unprejudiced Men think it is, there is no doubt, from his Majesty's Goodness to his People, and the Wisdom of the Parliament ; but they, in the Words of the Parliament-Roll above cited, will neither for *Protestation*, nor other *Words* in their *Behalf*, *stay* to give *Justice* as was used to be done in Times past.

THERE is a *memorable* Instance of this Justice, with Regard to Tenants, in relieving them against *Exactions*, and reducing their *Payments* to the *antient* Standard, very *parallel* to the present Case.

IN the Reign of King *Charles* the Second, the Lord Treasurer *Clifford*, a very *provident* Minister, raised the *antient* Rents of the Tenants of the Dutchy of *Cornwall*, who held their Estates by the *Customary* Tenures of one, two, and three Lives ; and this he did for the *Improvement* of the King's Revenues, as he was pleased to call it : But the Tenants soon appeared in *Defence* of their Rights, and humbly besought the King to be discharged of the increased Rents, and to be restored to the old Rents formerly paid ; which was granted accordingly ; and the better to effect the same, and that the Tenants might be encouraged to renew their Leases and Estates, — enabled to repair their Houses, — provide for their Families, —
and

and improve their Lands, the Statute of 27 Car. 2. was made with a Saving to the Tenants, their Rights, Estates, Customs, and Tenuies in the Land.

WHAT now only remains to be done, is, *To offer a few Considerations (after this Example) to settle and reduce excessive Fines in the Church.*

WITH the Tenants of the Church, by what I can learn, Things have *always* run not on the *lessening* but *increasing* Hand: I say, I do not know that Fines have on any Account been *lessened* in any *one* Instance; and yet do not *Accidents* happen to diminish the Profits of the Estates of these Tenants, as *commonly* as to augment them? Hath not every Man *more* or *less* Income from his Estate and Profit by his Industry, in *Proportion* to the Charge of his Condition, the *Number* of his Children, *Losses*, and *divers* other Charges which happen every Year in Families? Have not of late Years *extraordinary* ones happened? Why then, in the Name of common Equity, should not these Things be considered, and *Fines abated*, sometimes, according to these Proportions? No *Losses*, *Accidents*, and *Calamities* signify nothing, *Nulla vestigia retrorsum*.

IN this *View*, indeed, a Reason is suggested, for *lessening* the Fines *occasionally*; but that is not what I contend for: I only contend, that a *certain moderate Rule* should be *fixed* and *established* by Parliament for *fining*; and insist, the Tenants have a *Right* to have this *Certainty* annexed to their Estates; and moreover, that the different Circumstances of the Clergy and Laity do evidently require it.

FIRST,

FIRST, as to the Circumstances of the Church; 'tis certain, that to be *attentive* to the *Methods* of growing *Rich*, is quite *foreign* to the Function, Character and Constitutions of the Clergy; it *embroils* them in *secular* Affairs, Contention, and *Law-Suits*, and obstructs the very *Design* of the Gospel, as * often hath been observed; and it would be really a melancholy Thing to *recount* from History, how such *Acquisitions* have *prospered* in the Families of those that got them.

AGAIN, by such a Practice, inquisitive Men will be scandaliz'd, they of different *Denominations* amongst us, whose *Numbers* are not *few*, will *contract* more *Prejudice* to the *Church*, from which they are but *too studious* after Reasons to *dissent*; and as to the *Body* of the People, as soon as they come to *feel*, they will easily be turned aside: In short, if the *Affections* of the *Laity* be once *lost*, the *Security* of the *Orders* of the Church is lost; so true it is, that the *Affections* of the People are equally the *best* and *surest Defence*, both to the *King* and the *Church*, and 'tis a most serious Consideration, that 'tis generally *more easy to hate, than to pay*; all which demonstrate a Necessity to be *moderate* in taking of Fines, and that a *certain* Rule should be established for that Purpose.

BUT once more, if there be any, and I hope they are but few who look on a Church-Benefice of the *Higher Forms*, as a *publick* Office of *Honour* and *Profit*, without *painful* or *heavy* Duties annexed, and that a Pastoral Charge or Cure of Souls is a Thing unbecoming its Dignity: I say, if it is considered in this View, and that the Law hath

* M. Simon on the Revenues.

constituted this Office with *Fines*, *Fees*, and other *Profits*, payable for the *Execution* thereof; in this Case the *Fines* or *Fees* of this Office, for Reasons *obvious* enough, ought to be *settled*, *fixed* and *known*, and he that will accept of this Office, in order to execute it with *Honour* and *Advantage* to the *King* and his *Subjects*, will undoubtedly *desire* that his *Fees* should be so *settled*; but it was *never* permitted to any Man, that I know of, to *judge* for *himself*, and to take what *Fees* he pleased for the Execution of his Office.

BUT if an Ecclesiastical Office is to be considered as a *Spiritual* Employment erected for the *noblest* Purposes of *Benevolence* to Mankind, there is the *stronger* Reason, for the Possessor to give *Consent* that the *Fines* and *Fees* of it should be *settled* and *known*; because if Avarice in Laymen is a *high* Crime, much more is it to be *avoided* by the *Clergy*, whose *essential* Character consists in being *free* from it; and in that, I am convinced, the *Honour*, *Being*, and *Safety* of the *Church*.

IN the next Place, with respect to the *Circumstances* of the *Laity*.

THE *Poor*, who by the *Constitution* of the *Church*, which we are told is as *firm* and *immoveable* as ever, were to be *found* out of the *Revenues*, are now, I may say, *wholly* cast off to the *Laity*; of which the *Poor's* Rates, the *many* Schemes and *Workhouses* for employing them, *Hospitals* and *Charity-Schools* of *modern* Foundation; the *many* *Benefactions* we know and daily hear of, the *Gatherings* in our *Churches*, besides what are *daily* fed at the *Doors* of the *Great*, are *sufficient* Proof, and are Reasons that *press* very *hard* for *settling* these *Fines*.

2dly. ANOTHER Reason is, because it is well known that many of these Tenants cannot, with all their Care and Trouble, many times get their Under-Rent paid, and in some Places the *Estates* lie *Untenanted*: For the Truth of which, I appeal to all who have any Knowledge in these affairs; and yet the *Superior Tenant* continues to *bear* and to *pay* the *Full* of all *Fines, Rents, and Taxes*.

BUT if *Fines* were *light* and *easy*, Under-Tenants might be *encouraged*, *Rents* better paid, and the *Nobility* and *Gentry*, who have been *always* the *best* Support to the *Crown*, be *abler* to serve the *King* with their *Purses* and their *Persons*: But will they be *able* or *very* willing to do this, if they be weakened or burthened in their *Estates*? And if they come to be *bad Pay-masters*, must not *Tradesmen* that *depend* upon them, *sensibly* feel it?

ANOTHER Reason arises from the *dreadful* Consequences of the Year 1720, a *Calamity* that is *intailed* on Children yet *unborn*: You can scarce go into any Neighbourhood, but you hear of *incumbred* *Estates*, *shatter'd Fortunes*, and sometimes more *pernicious* Effects of that *destructive* Scheme: I could give Instances amongst several of these Tenants I am speaking of, that would *melt* one's Heart with *Pity*, if the most *moving* Circumstances of *Distress* could do it; from whence it is to be hoped, the *Precedents* then made for *altering, reducing, and fixing* the *Rate* and *Value* of *Lay* *Estates*, and the later Reduction of Dividends will determine every Man of *Conscience* and *Justice*, to endeavour to fix and settle these Church *Fines*, which instead of *lessening*, have surprizingly *grown* ever *since*.

AFTER this, it is here proper to take Notice, that what hath been said concerning the Tenants

for Three Lives and Twenty-one Years, is applicable to such, as now by particular Laws, and for special Reasons, hold for the Term of Forty Years, keeping on the Course they are now in; and besides, being all originally the same, as I suppose, there is no Reason to except them. And it is farther to be mentioned and submitted to better Judgments, whether it is not equally fit and reasonable, that the same *Certainty* and *Affurance* above contended for, ought not to be annexed to the Customary Tenants of all other Foundations, and Benefactions that have the same Aspect to the Publick: But be that as it will, in the present Case, where nothing is desired to be taken from the Church of any Kind, a good Reason cannot, I persuade myself, be offered against *settling* the Fines in a just and moderate Way.

BUT there is in Books a pursued Thread of Complaint, how true I own I am somewhat doubtful, that in *Consequence* of the Reformation, several Sees were *wasted*, which hath caused Impressions, it may be, neither favourable to the Laity, the Tenants, nor that great Event; and if this shall be now urged as an Argument against me, I answer, If it was *true* that some Dilapidations were committed, it is as true, that *all* the blame ought not to be *laid* at the *Doors* of the *Laity*, of which the * Statute referred to in the Margin, will be always a *memorable* Proof: And now by the *Care* that is *taken* to make up the supposed Loss by *Commendams*, I hope there is

* The Stat. 13 Eliz. c. faith, *That some Palaces and Manor Houses were suffered to run to Ruin, some utterly to fall to the Ground, that the Timber, Lead, and Stone, were converted to the Possessor's own Benefit, to the Intent and Purpose to defraud their Successors.*

no Reason to complain; and besides, if they will have Patience but to stay a little while, 'till the Bounty of * *Queen Anne grows up*, a Foundation is there laid, not only to repair the Dilapidations above-mentioned, but also to erect more noble Edifices than were demolished before or since the Reformation.

THE Commissioners for that Bounty, 'tis well known, are a Corporation, with an *unlimited Capacity to purchase and take in perpetual Succession*, the Statute of *Mortmain*, or any other Law notwithstanding. And, inconsiderable as it may seem at first View, yet 'tis *demonstrable*, in Time that Fund will, of itself, be able to *engross* all the *Estates* in the *Kingdom*, and it will be the sooner effected by the large Donations that are daily given to it, which amount in the Whole to near 40000*l.* as I am told.

Dr. *Prideaux* confirms what I say; The Queen's Majesty's Bounty, saith he, *Hath laid a Foundation for the redeeming again Impropriations to the Church; — And if it be laid out for the buying in of Impropriations to the Parish Churches, it is sufficient to buy in Twenty or Thirty of them every Year; then he adds to this Effect, And if Lands and Donations to Popish Monasteries and Convents beyond Sea, were taken by the Government, and assigned to the same Use, the whole Work would soon be done, and the Church again restored to that Competency of Revenue necessary for it.*

THUS the Dean † argues; but when the *Work is done*, when Abbey Lands and Impropriations are

* V. Stat. 2 & 3 *Anne*, c. 11.

† Vindication of an Award made by K. C. 1. p. 64.

all bought in, what is to be done with this *perpetual Fund*? That he doth not say; but there is no Cause to be uneasy, *Posterity*, no doubt, will *restrain* it when it grows to be *dangerous*; this shews, I think, the Church to be in a pretty good Way: And as to the *Parochial* Clergy, whose Livings want Augmentation, I *heartily* wish they were provided for sooner than this *Bounty* proposeth to do. Upon the whole, there is no Colour or Pretence, on Account of Dilapidations committed by the Reformers, or in Consequence of the Reformation, to object to the settling of Fines at this Time.

BUT there is *one*, and but *one* Consideration behind to be offered for settling of Fines; from which, I think, it will appear to be of absolute Necessity, to settle the Rights of the Laity upon such a Foundation, as may never be shaken.

THE Writer of a Preface prefixed to the Bishop of London's *Codex*, contends for the *Restoring of antient * Discipline, which has been lost by Disuse*. — *The Constitution, he reckons, hath undergone no such Changes, but that the antient Foundations remain as firm and immoveable as ever*. — That the Clergy are the best † Judges what are the proper Methods for promoting the Interest of the Church in all Kinds, — in judicial and prudential Matters of the Church, — the most proper ‡ Assistants to the Prince, — and are warranted by the Word of God, to correct and punish the unquiet and disobedient, by the exercise of Spiritual Discipline. This is the System laid down, among other Things, in that most elaborate and extraordinary Preface, and with such Dexterity and Address, that an unwary Reader doth not readily perceive the Consequences.

* Preface p. 15.

† lb. 30.

‡ lb. 22.

IF I had Time, or the Brevity I propose would permit to lay before my Countrymen an Account of this *spiritual Discipline, now lost by Disuse*, and the *Exercise* of it; I can assure him, it would *frigh-*
ten the *present* Age, and may be *severely* felt by that to come: If a Man of a proud, busy and aspiring Mind, of Cunning to contrive, and Boldness to execute any Attempt, should, by various Arts and indefatigable Labour, place himself at the Head of the Church, which God avert! and should be able to seduce his Prince, to restore this Exercise of antient *Discipline lost by Disuse*; that to him it belonged, as his *Prime Minister* and *Assistant*, to judge what is *best* for the Interest of the Church in *all* Kinds; that he will and can, by Virtue of God's Word, *judicial* Sentences, and *Synodical* Decrees, *chastise* the *Disobedient* and *Unquiet*, by the *Exercise* of *spiritual Discipline, lost by Disuse*; How may your *Civil* Rights be laid *waste*, and *trampled* under Foot? The *Tenants*, no doubt, will be *soundly disciplin'd*, and their Condition be worse than that Country is now in, that hath a *Pontiff* for it's Prince.

BUT for the *Sake* of God's Word, and what else is *dear* to us, let us not go *backwards*; let us *keep* where we are, and defend ourselves, by a *Wall* of *Safety*, from this *Discipline lost by Disuse*; and the rather, since we *need* no Assurances that it will be *used* and *executed*, as fast as Power can be got to *effect* it.

BUT, alas! 'tis *little* Ease to our *present* Condition or *future* Fears, to expostulate *how* it hath happened, that in a Country, *jealous* of its *Rights* and *Liberty*, that *enterprizing* Piece hath passed *unobserved*: However, when *Principles* of this *Tendency* are laid *open* to *publick* View, though no more

was meant, than the *running* of *easy* or *sounding* Periods, yet they should have the *Effect* to put us upon our *Guard*, and the *Methods* of *Self-defence*; and much to *blame* will they be, who use not such *Means* as they have in their *Hands*, to *deliver* themselves and their *Posterity* from the *Consequences*: And it cannot, I presume, be justly fear'd, that in a *Reign founded* in *Liberty*, and *secured* by it, we shall act or appear with *less* Ardor or less *Zeal* for the *Rights* of the *Laiety*, than our *Popish* Ancestors in *Defence* of the same Cause; of which the *Instances* above are noble *Proofs*; nor *slip* any *Opportunity* that occurs, to *fix*, upon the most *firm* and *solid* Foundation, these *Rights* which others may have *Intentions* to *disturb*, and particularly now in the *Important* Article before us, on which so great a *Part* of the *Rights* and *Property*, *Estates* and *Quiet* of the *People* of *England* depend, by passing a *Law* for ever to *settle* these *Fines*.

The CONCLUSION.

I HAVE now run thro' my Thoughts on this Subject, in *View* to a *Bill* which I had lately Notice would be *offered* to settle excessive Fines ; but have proposed no *Rule* or *Measure* for that Purpose ; for that doth not seem to me, to fall within the Province of any *private* Man. It was enough, it may be, and running no little *Hazard*, to venture so far, to shew the *radical* Difference between *Lay* and *Spiritual* Estates, the *Customary* Tenant-Rights, and a *Necessity* to ascertain the Fines ; which Points, if I have made good, and if any *Lights* are struck out for the *Service* of this *Common* Cause, and the Persons of Honour concerned in the *Bill*, I have my End, and shall make no Apology for the rest.

AND if these Lights should happen to be too strong for some Eyes, let it be considered, they might have been stronger ; but I mean to raise no Flame ; I have no *Gratifications* that *Way* : What hath been said is to be imputed to those, and those only, who have given Occasion to it : Every reasonable Man, I doubt not, will make the proper Distinctions ; *All* are not to *blame* ; an *Office* may be good, though the Officer hath Faults ; nor is this in any respect, a Cause to which the Church is to be made a *Party* : I am sure, I will serve in no Cause against it, and am full in Opinion with the Author of the first Pastoral Letter, That *the Orders of the Church ought not to be disrespected for the Faults of a few*.

FOR this Reason, I am not satisfied with Writings

tings complaining of *Disrespect*, when I find not the Cause of it fully *examined* and laid *open*, which can *only* cure and *prevent* it : For as it is great Injustice on the Side of the Laity, to *disrespect* the *Orders* of the Church for the *Faults* of a *few* in the Church, so 'tis just on the *other*, that those *few* that have *Faults* and breed *Disrespect*, should be *freely* told of them ; for 'tis obvious enough, that Outcries, and *general* ones too, have come from the *Faults* of a *few* ; and until this be done, 'tis in *vain* to complain of *Disrespects*. How useful and beneficent would it be, if in Books, which some have the Leisure to write, the *Prudence* and *Restraint* in *Practice*, necessary to avoid *Disrespect*, were *occasionally* explained, and the Mischiefs, by *contrary* Measures, *set forth*, in Examples from past Times ?

How full of *Respect* would every one be to the *Orders* of the Church, if they saw a *Recommendation* of moderate Fines, with the serious Advice, that though long Fines, like the long Leases above, are the *shortest* Way to grow *Rich*, yet are the *surest* to raise *Disrespect*, if nothing worse ; and if it was well remembred, how easily Things here are put out of *Joint* ; that one *Peg*, as Dr. *Stillingsfleet* † saith, *raised too high in the Church, causes great Disorder* : If those *few* in the Church that have *Faults*, your *Peg-screw*ers, were narrowly watch'd, as the Cause of *Disorder* and *Disrespect*, and *positive* and prudential Duties of *Benevolence* were not *less* regarded than *positive Precepts*, and the *Exercise of Discipline* lost by *Disuse*, *Disrespect* would *vanish* very soon, and the Church see her *Orders affectionately* esteem'd,

† Iren. B. 1. c. 2.

BUT if Things should be *managed* by the *Rule* of Contraries, *contrary* Effects must follow : If *many* Pegs are *screw'd* too high ; if the Tenants are *screw'd* for *Fines*, or the Successors, by *Waste*, cutting down *Woods*, *Timber Trees*, the *mischievous* Practice of *concurrent* Leases, or *any* other Way ; if they come to be *profess'd* in *Politicks* instead of *Religion*, to account the *Simplicity* of the *last* too mean a *Vocation* to serve in, and *Patience* and *long* Suffering are *pushed* as far as they will go : Farewel Respect, farewel Esteem ! And again, if a *Committee* should *inquire* how this *National* Charity hath been *disposed* of, if applied to the *Pious* Uses directed by their *Ancestors*, and the *Trusts* declared by the *Statute* of 25 E. 3. unless they come out in some *tolerable* Degree *performed*, it may be *difficult* to keep those *Orders* on their Feet.

FINALLY, I have been led to say thus much out of *pure Affection* to the Church and its Orders, being firmly persuaded that a *Bill* to *ascertain* and *establish* the *ancient Rights*, *Customs*, *Tenures*, *Fines*, and *Terms of Renewal* of the Tenants, will exceedingly *conduce* to the Security of the Church, and the mutual Benefit of *both* Sides ; and for this I have the *Opinion* of several grave and learned Divines of *distinguish'd* Merit in the Church : It will have the Effect to *quiet* Mens Minds, *encourage* their *Industry*, and *cheerfully* to set about searching for Mines in their Lands, from which *great* Riches, I am assured, may be produced and *divided* between the Lessors and Lessees in a *due* Proportion, which as the Law *now* stands, must lie for ever in their *Native* Beds, to the *Prejudice* of the Church, the Tenants, and the Kingdom.

THEN

THEN Plantations and the Growth of Timber-Trees, will flourish every where, Building and Improvements of all Kinds be carried on with Zeal ; then we shall hear no more of *rigorous Fines* and *Refusals* to *renew*, or *demolishing* of Freeholds, which last Particular of itself *excites* Attention, and is of the *utmost* Consequence to be thought on, both with regard to *private* Property and the *Publick*.

AND then the *Laity* will be *always* ready, and *resolved* to *support* the *Orders* of the Clergy, and *flock* to their *Standard* on every *Exigency* or *Call*. For which *good* End, and to preserve that Harmony and Affection, wherein the *Honour* and *Prosperity* of the Church depends, and to *take* out of Men's Mouths in Time, Discourses on this Subject, I hope every honest Man will, *openly*, and *without* Reserve, contribute his Endeavours.

T H E E N D.